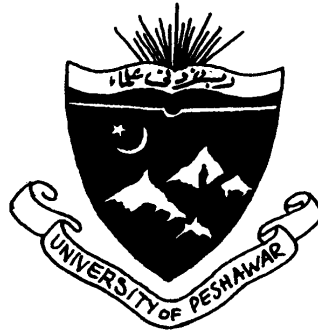


**CIVIL-MILITARY RELATIONS IN PAKISTAN AND
THE ROLE OF JUDICIARY (1977-1999)**



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DEDICATION

This research work is dedicated to the one and only; my late father,

Mr. Fazal-i-Rehman and loving family.

Although, my father left us when I was much younger, however,

his guiding principles and advices have been playing an active

role in my life, mainly, because I am very much inspired

from his sound character and

decent personality.

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Abstract

This thesis examines civil-military relations in Pakistan and the role played by the judiciary whenever bitterness occurs in their relations. The study begins from 1977 when the state was placed under martial law despite constitutional safeguards against such moves. All arbitrary attacks on the elected government, either through a direct military takeover or through the president who was bestowed with sweeping powers under constitutional amendment of Zia era, have also proved fatal for judiciary despite the court's willingness to support the takeover. The independence of judiciary was assaulted by employing different tactics such as by appointing likeminded judges, setting up of a separate hierarchy of courts and bringing amendments to the constitution for curtailing its jurisdiction. Both General Zia and General Musharraf asked the judges to take fresh vote of their offices under a special order and the refusal of which culminated into the latter's forced retirement. The military would then put in place a coalition set up consisting of politicians, business elites and local bodies representatives ... all willing to support the military junta. Reference may be made to the political set up based on a power sharing formula which General Ziaul Haq brought to the force in March 1985. The basis of this power sharing arrangement was the erstwhile Eighth Constitutional Amendment passed by a rubber stamp parliament in 1985. Through this amendment, the military had chalked out a parameter within which the civilian set up was to operate. The 8th Amendment had a devastating effect particularly its Article 58(2)(b). General Ziaul Haq's removal of Muhammad Khan Junejo from office was under this Article. When the arbitrary action was challenged, the Supreme Court sided with the General even though the latter was in the next world at the time of Court judgement.

Though the military rule ended in August 1988, it left behind a new pattern of civil-military relations under the 8th Constitutional Amendment, wherein Article 58(2)(b) served as a safety valve against direct military intervention. In the post Ziaul Haq era, the military opted to exercise an indirect influence on the fate of a setting elected government. The successive elected governments faced legitimacy crisis in 1990s and their attempt to assert authority would be foiled because of the agenda set-forth for them by the military in mid 1980s. There are instances to suggest that the military commanders and the President of Pakistan had acted in unanimity for dislodging three civilian governments one after another in 1990, 1993 and 1996. The arbitrary action of both Ghulam Ishaq Khan and Sardar Farooq Ahmad Khan Leghari as presidents, were not entirely free of military influence. To keep their hold over national politics, the military adopted a two-fold strategy i.e., get a political set-up dismantled through the exercise of power under 58(2)(b) by the president and, alternatively, to topple the government directly as was the case in October 1999. On each occasion of arbitrary action for a governmental change - either through a military takeover or the presidential power under the constitution, the judiciary was found willing to validate the action based on one or another doctrine.

Chapter - I

INTRODUCTION

1.1 Introduction

The concept of democracy started developing in Ancient Greece as early as the 500's BC. Now democracy as a government of the people, by the people and for the people has become a universal saying. Democracy requires a strong leadership which can safeguard the sanctity of the Constitution and take measures for strengthening the civilian institutions including the judiciary. However, the concept of a democratic system needs a clearer understanding before the appreciation of the roles of higher judiciary in its sustenance. The principles laid down for the rule of law are the basic substance of a democratic system and it is based on the concepts of supremacy of the constitution, equality of all before the law of the land and ensuring civil liberties. No doubt, democracy is the best form of government in the current world. However, the superiority of a democratic system vis-à-vis other political government stands out mainly due to the principles of separation of powers as well as checks and balances, that is exercised by the three arms of the government over one another.

A through study of the history of democracy shows that it has often been characterized by a blatant disregard for the rule of law, both by the political executive and the legislative chambers. These two political institutions often carry out their respective powers and functions in such a manner that it tries to suggest having an unlimited power or are above the law of the land, the constitution. Therefore, to be the safeguard of the democracy, the judiciary must fulfil its constitutional role. The sustenance of a democratic system mainly depends on autonomy and independence of the higher judiciary. The judiciary should interpret the constitution, settle conflicts and disputes arising in the growth of democracy and ensure the rule of law. The higher judiciary always protects the fundamental rights of the citizens. The judiciary, irrespective of its original jurisdiction ensures a clear separation of powers between the government and the legislature.

The issue of judicial independence during military rule is often more complex than the dictatorial regimes. That military regime often uses the institution of higher judiciary for counteracting many of the dysfunctions which usually plague their rule. The higher judiciary also helps military regimes in maintaining control, bureaucratic discipline, adopting and implementing unpopular policies, and enhancing legitimacy to the dictatorial regime. However, the judiciary also has a potential of opening a space for the political activists for mobilization against the state, and synergistic alliances often form within the judiciary, the judges who wish an expansion in their mandate and want to affect political reforms. The military regime tries its best to contain the judicial activism mainly by providing incentives to the judges which are in favour of judicial self-restraint, to design a fragmented judicial system, constrain access to speedy justice, and incapacitate judicial support networks.

The Courts play a significant role in the political stability, economic growth, peace building, equal dispensation of fundamental rights to all the people. An independent and autonomous judiciary in a country is evident of the fact that there will be a democratic culture and political institutions will be flourishing. Fundamental rights as per constitution will be fully respected and exercised in the country. No doubt, the democracy cannot be given sustenance without an independent judicial system. In a democratic system, the institutions of judiciary, and civil-military establishment usually allows the elected government to run the routine affairs of the state in accordance with the party manifesto. Nonetheless, the demand for protecting authority of the chief executive of the country and failure to give an equal respect to other state institutions are hypocritical and a threat to democracy.

In fact, with the decolonization after the 2nd World War, the military emerged as one of the strongest institutions in states which received monetary and training assistance from the former colonial powers. Generally, in the developing countries, the politicians indulged in fighting for power often with motives that the military did not consider in the best interest of the country. To military, handling of certain matters was too dangerous to be left to the politicians, especially the critical situations such as security threats to the country, collapse of the constitutional machinery, government facing legitimacy crisis, civil unrest or any other violent turmoil. By competence, the

military is so exceptionally well placed that it not only defends the borders but also defines the good and bad for the nation.ⁱ

The military assumes that the political leaders, the institutional framework of elected government and the overall political culture is inadequate to address the needs of the country. Moreover, the military tags itself as the only patriot institution in the country. Likewise, the military regards itself as one of the strongest organization which takes the responsibility to decide what the best is for the people of the country and that only they have the capability to defend the country both internally and externally due to their organizational characteristics, institutional strength and resources. Constitution being a supreme law for governing a country is either abrogated or suspended when the military decides to intervene in the politics. This is followed by drastic initiatives such as suspension of the constitution, dismantling elected government, dissolving parliament and restricting judiciary's power terming these steps to be in the national interest.

Democracy in Pakistan has been threatened several times for numerous reasons including weak intuitions, lack of political leadership, corruption by the government and the geopolitical placement. Defective leadership has been a factor in Pakistan politics since the beginning. On the other hand, the military in Pakistan emerged as the strongest institution. Moreover, the executive in Pakistan has always enjoyed superiority over the legislature and the judiciary. Pakistan has practiced one provisional constitution, three permanent and one interim constitution. However, due to political instability and crises, the military has intervened in the political affairs either directly or indirectly. Therefore, the history of Pakistan is full of constitutional casualties mainly due to military adventurism and their extra-constitutional measures.

Pakistan came into existence because of the political struggle and with the power of vote in 1947, after the partition of British India. Therefore, Pakistan is termed a post-colonial state which, after independence, continued the same civil and military institutions including the judiciary that the British had introduced for the promotion of their colonial agenda. However, the inheritance of colonial legacy by the state of Pakistan does not necessarily imply a structural continuity of the pre-colonial bureaucratic state as is most often made it to be.ⁱⁱ Moreover, the state of Pakistan carried on the tradition of electoral, representative and parliamentary political system.

The people have shown vigour and some vitality to continue with a democratic government as an aspiration for the system.ⁱⁱⁱ

If it was not so, then the very meaning of independence movement for a separate state and subsequent partition of the British India loses its importance. After all, the Muhammad Ali Jinnah-led All India Muslim League had an agenda of Muslim interests to negotiate with the Indian National Congress and the British.^{iv} Seen in this backdrop, Pakistan needed a political sincerity and capable politicians to keep the democratic system and do not allow the military to get involved in mainstream politics. The democratic government under the Founding Father, Muhammad Ali Jinnah was successful in initiating a system of parliamentary democracy in Pakistan. It was an elected legislature that continued with the civilian rule and worked as Constituent-cum-legislative Assembly. It was to set trends, democratic values, and shape the political destiny of Pakistan.

This beginning of democratic process in Pakistan should have resulted in the establishment of a truly representative political system. Instead, the process of institution building took the back seat because of the gigantic problems of the newly created state of Pakistan.^v After the death of Muhammad Ali Jinnah, confrontational politics at national and provincial levels created serious political challenges. The institution building process became more challenging due to the less interested and less capable politicians. The non-representative character of the office bearers in state institutions was mainly due to the palace intrigues that created newer challenges for the nascent state. The political leadership also faced the challenging task of constitution making which delayed substantially for lack of consensus on major national issues.

Pakistan has juggled between the civilian and military rules since 1947. Even when the politicians had been at the helm of political affairs by heading the elected governments, the military has often controlled extensive powers in the political setup but behind the scene.^{vi} Moreover, frequent military coups in the political affairs has increased the political volatility in the country and has created hindrances to the democracy in Pakistan.^{vii} However, Pakistan has, at times, made progress towards the achievement of civilian control of political affairs. Pakistan has, in fact, experienced few opportunities in which civilian control was relatively stronger and democracy

could be established. However, to overcome the interference of military in political affairs, strong political institutions are required which have been lacking in Pakistan due to the inefficiency of politicians.

The state of political affairs had been dismal for the people of Pakistan because both military and civilian governments have been less bothered for bringing changes in their lives. No doubt, military rule in Pakistan has always been due to the inept and corrupt civilian governments, unrest in the power corridors and economic bankruptcy. When the situation worsens the saviours of the state leave the barracks and move in to safeguard the national interests. The military dictators brought in the grassroots level of democracy while the civilian governments ruled in a tyrannical manner, the examples can be of Basic Democracies of General Ayub Khan and Local Government System of General Ziaul Haq. On the other hand, the government of Z. A. Bhutto was a democratic but had a dictatorial bent of mind. Similar strategies were followed by Nawaz Sharif when he enjoyed absolute majority in the parliament during his second term in office (1997-1999).

General Ayub Khan created an ironic dichotomy by establishing the system of Basic Democracies where people were provided opportunities of participation in the management of affairs at the grass roots level. This practice was followed by all the military dictators to side-line the politicians and, at the same time, give an eyewash of democratic setup to the international community. Military, throughout this period, invested in its image building by giving results and extra ordinary performance. It succeeded in developing its image in the eyes of the people. This strengthened the hands of military when they chose to rule the country according to their preferences. Despite difference of ethnic, social class, religious cleavages, strong authoritarian tendencies and prolonged period of rule by the military, the passion for democracy in the masses continued to resurge. However, there is no contradiction that the cultural and structural conditions weigh heavily against the promotion of democracy and political institutions in Pakistan.^{viii}

As a result, Pakistan has been subjected to military rule and enforcement of emergencies several times i.e. in 1958, 1969, 1977, 1999 and 2007. Thus, the military has ruled over the country for more than half of its total 68 years of independence.

The constitution was either abrogated, or partly or wholly suspended by every martial law regime. The functions of government were conducted through new legal order such as the Laws (Continuance in Force) Order, Legal Framework Order (LFO), Provisional Constitutional Order (PCO) and Revival of Constitution Order (RCO). Nevertheless, the military regimes in the Third World countries and especially in Pakistan have not been prone to surrender the power unless forced to do so by an unbearable setback such as defeat in war and/or a grave economic crisis. Every military ruler has given priority to consolidation of his personal rule with consistent efforts to stay in power for a longer period.

However, it is believed that the military regimes in Pakistan also required support from the masses for their authority legitimization. Nonetheless, the military should accommodate the popular demands of the people for a democratic rule, and only then could manage to continue in power. The unwillingness to respond to such demand by the masses leads to coercion which deepens the isolation of military and breeds fragility. Consequently, a military regime endeavours to implement a political set up which seeks to absorb and channel popular participation manufacturing a political party with the support of some pro-military politicians.^{ix} These likeminded politicians quickly extend their support and loyalty to the military regime and by doing so take an opportunity of sharing powers by forming part of a quasi-civilian government. General Ziaul Haq could side-line the political leadership of the country when the major political parties boycotted the non-party elections.

Hussain says that the military in Pakistan became increasingly active in abrogating the constitutions and toppling the elected governments whenever the situation suited them. Military, being an organized and effective institution, felt encouraged by the ineptitude of the politicians to interfere, when necessary by force, in the normal political and constitutional process of the country. The elected governments and the constitutions were put under siege and the judiciary was subdued to support the illegal moves of the despots.^x Newberg has described, that all military dictators in Pakistan declared that the country would be run as much as possible under the abrogated or suspended constitution. Paradoxically the political basis for the constitution was not considered viable but its administrative rules were adequate. To

Newberg, only the superior judiciary has been able to mediate such discord, and that too only incompletely.^{xi}

However, it can be easily observed that most of the times, the higher judiciary has followed the political power trends of the time. Instead of following an independent and impartial trend, the judiciary has validated the military takeovers in Pakistan. In fact, the controversial role of civilian governments in dealing with the judiciary had also weakened the civilian institutions thus providing opportunities to the military for direct and indirect intervention in political affairs. As a result, the role of judiciary as guardian of the constitution and the institutions thereunder has only partially materialized in the case of Pakistan. Moreover, the civilian governments would have secured strong position in their relations with the military, had they been able to develop harmonious and friendly relationship with the opposition political forces and the non-political state institutions.^{xii}

All these factors undermined the prospects for growth and development of a democratic political system. A question arises that how does the higher judiciary performs its functions during the military regimes that it challenges the political hegemony of the dictators in states where democratic institutions are weak as compared to military? The dissertation analyses the conceptualization of the higher judiciary as an interactive state institution which seeks the support of other political actors to answer this question. This study focuses on a critical case study in Pakistan which gives an excellent perspective about the mutual relations of the state institutions of judiciary, the military establishment and the elected government of the ruling party.

It is interesting to observe that it has been the judiciary which gave protection to the undemocratic move of the Governor General to dissolve the First Constituent Assembly in October 1954. Moreover, except the second martial law (1969-71), the remaining three military dictators were successful in getting their takeovers validated by the superior judiciary which has always been exploited by the dictators to prolong their dictatorial rule. Newberg criticises the role of judiciary that, ever since the first decade of democratisation, the judges in Pakistan have tried to match their constitutional ideals and legal language to the exigencies of current politics. The

judgments of judiciary have often supported the existing regimes, presumably to retain a degree of future institutional autonomy.^{xiii}

However, it has also been observed that the judiciary had faced pressures at the hands of civilian governments and military rulers and could not resist the authoritarian politicians and military dictators. Jalal says that the supremacy of the political executive over not only the legislature but also the judiciary had been established in the first decade of Pakistan's history. This system was also suitable for the civil and military bureaucracies and their allies among the dominant feudalistic classes in the country. The responsibility for political inability and lack of democratic consolidation in Pakistan must be shared by its civil and military bureaucracies, judges of higher judiciary and the politicians.^{xiv}

The study explores judicial decision making in Pakistan, the military rule of General Ziaul Haq which is known for by a relatively higher degree of power fragmentation and, since the 1990's, extreme level of political instability in Pakistan. No doubt, the former would foster political manipulation of the courts in accordance with the distribution of power theory, the latter imply a relatively independent judiciary. Indeed, both military regimes and civilian governments especially that of Prime Minister Nawaz Sharif could rule at the federal level with a relative degree of sympathy from the judiciary. As in contradiction with the implications of political fragmentation, the way judicial appointments have been done during military rule would suggest that Pakistan's Supreme Court justices were not able to challenge General Ziaul Haq and therefore, have treated him with velvet gloves.

The Pakistan's superior courts have been significantly weak in countering arbitrary use of power by the military regime. However, the courts enjoyed significant institutional autonomy and independence, and have often employed its veto power of judicial review over the elected government and the legislatures. Comparing the higher degree of political power of the military establishment in Pakistan, it can be understood that the lack of real power for judicial oversight over the armed forces is not surprising. This dissertation has conducted a critical analysis of the alliance which the superior courts and the armed forces have developed. However, the study suggests that the level of cooperation extended by these two state institutions to each other is not necessarily sustainable in the future.

After the independence of Pakistan, the superior courts have failed in playing a significant role in the development of Pakistan's political system as an Islamic state with a democratic form of government. The military interference in political affairs of the state and imposition of martial law has been a major reason behind its failure. Another significant reason is the unnecessary and undue interference of the political executive in the affair of judiciary due to which this important institution of state has been sometimes disabled to be performing its jurisdiction as an autonomous judicial body.

The role of the superior courts judges has been equally discouraging and they could not perform in accordance with the demand of this prestigious institution. They could not deliver justice especially, when key decisions were taken about certain political cases which had greater importance in terms of political and historical aspect and were mainly related to the restoration of a democratic system in Pakistan. However, the discussion on the role of superior courts in Pakistan is like moving into the cave of lion and giving him a lecture on the benefits of becoming a vegetarian. The major dilemma of Pakistan's political and constitutional development is that the concerned authorities have always cooperated for the survival of the individuals and not for the state institutions which has been the major cause of lack of institutional development in Pakistan.

There is correlation among the institution of judiciary, political executive, legislatures, a democratic system, superiority of the constitution and the citizens of the state. All these actors of the state are interrelated and inter-twined with each other. History shows that only those nations could survive and develop their countries, which have ensured the rule of law and their courts have functioned with more autonomy and independence. However, the case of Pakistan is otherwise where the law grinds the common people and the elite rule the law. No doubt, our ultimate destination should be democracy irrespective of the fact that whatever we do, and the illegal ways we adopt to archive our self-interests. We should restore the role of our institutions. This is the ultimate way and we should adopt this way.

1.2 Military Interventions and its Withdrawals in Pakistan

The inefficiency of civilian governments in the first decade (1947-1957) to deal with the law and order situation provided an opportunity to military for an indirect intervention in civilian affairs. Padrino says that the Pakistan Army has been involved in civilian affairs since 1953. That year, when the police could not control religious violence that was spreading through the Punjab, the government of the time asked the army to intervene. Over the years, the army took an increasingly active role in government.^{xv} Rizvi also says that the military got the first chance of running the administration directly in 1953 after the outbreak of the Anti-Ahmadi riots in the Punjab. The Army was called out and martial law was imposed in Lahore. The political leaders were so much engrossed in their power politics that they hardly found time to reinforce the tradition of civilian supremacy. The politicians did not assert leadership over the military rather the crisis made them to look towards the military for support.^{xvi}

During the first decade of Pakistan, the growing political instability in the country shifted the real executive authority from the elected representatives to the bureaucrats turned heads of the state e.g., Ghulam Muhammad and Iskandar Mirza as Heads of the State. The political situation aggravated during 1958, however, there was no such urgency requiring President Iskander Mirza to impose martial law.^{xvii} The Supreme Court also took the decision in the Dosso vs The Federation of Pakistan Case to validate Martial Law, evidently in an unnecessary haste. Khan is very critical about this decision wherein the Supreme Court, led by Chief Justice Muhammad Munir, upheld the imposition of military rule. In the leading judgement, the Chief Justice held that even courts would lose their existing jurisdictions and could function only to the extent and in the manner determined by the new legal order. In their unholy haste to grant legitimacy to military rule, the Supreme Court Judges appeased the new master of the country.^{xviii}

On October 27, 1958, General Ayub Khan arrested President Iskandar Mirza and assumed complete control of the state powers. Later, Ayub Khan initiated the process of civilianising his rule with the military as his primary support base. As Rizvi has stated, Ayub Khan decided to hold a referendum with the Basic Democrats as an electoral college for obtaining their support for framing a new constitution. Three days later, he was sworn in as the President of Pakistan.^{xix} Ziring holds the view

that Ayub Khan's civilian face was more apparent following the promulgation of the 1962 Constitution and the lifting of martial law. However, only weeks after the National Assembly was convened, the President gave his consent to the Political Parties Act 1962. The Muslim League was reactivated.^{xx} Ayub Khan also became president of the newly created Convention Muslim League party, which performed as King's Party.

Before the imposition of second martial law (1969-71),^{xxi} the strained relations between President Ayub Khan's government and the opposition got aggravated when the political system was still under transitional period. The military withdrew its support from Ayub Khan, a soldier turned politician and extended it to the serving Commander-in-Chief General Yahya Khan for establishing their personal rule. Rizvi says that after the announcement of Ayub Khan's decision of not seeking re-election contributed to his loss of sympathy from the military and the civil bureaucracy. As a result, the military commanders were not willing to support him during political agitations. The opposition political leaders succeeded in forcing Ayub Khan to step down but failed to produce an alternate leadership. When General Yahya Khan realized that the Ayub Khan regime was totally discredited and it relied on the military for its survival, and the political leaders were unable to put forward an alternate leadership, he considered himself as the 'natural heir' to Ayub Khan.^{xxii}

Jalal has analysed that pressed from all sides, President Ayub Khan had no choice but to comply with the military commanders' demand of immediate handing over of power to General Yahya Khan.^{xxiii} Ziring also commented that Ayub Khan became more dependent on the Army and its commander, General Yahya Khan. Before President Ayub Khan accepted Yahya Khan's radical proposition and agreed to step down, he decided to make one more attempt at appeasing the opposition. General Yahya Khan reacted negatively to the President's actions and he not only forced him to reconsider his options, he demanded Ayub Khan's formal resignation. Thus, on March 25, 1969, Ayub Khan announced his decision to withdraw from politics and to pass on the authority to General Yahya Khan.^{xxiv}

General Yahya Khan along with Z. A. Bhutto is generally held responsible by the nation for the disintegration of Pakistan in December 1971. However, it was

Ayub Khan who brought General Yahya Khan into power in March 1969. In fact, the former had been grooming the later as his successor.^{xxv} General Yahya Khan's brother^{xxvi} was the head of the civilian intelligence who is believed to have created an environment of stress and chaos around the President. In fact, he provided exaggerated reports about the declining popularity of Ayub Khan which ultimately led him to the resignation as president. These crises also led to the imposition of another military rule in the country. Another comprehended reason for the failure of the political process in the country was the belief of the military on Ayub Khan that the latter would not be able to control the situation and need to change the government.^{xxvii} Indeed, the opposition political leaders succeeded in forcing out the President but were unable to compromise on various issues. As they could not provide an alternate leadership, it resulted in another martial law. The political forces compromised national interests and could not understand that outwitting of each other and offering the power to another military general would not serve the cause of democracy in Pakistan.

General Yahya Khan did not gracefully withdraw from politics after the elections of December 1970 and did not leave the politicians to resolve the issues on their own. The military did not support a constitution with weak powers with the federal government and diluted ideological predisposition of the military was not acceptable to the Generals.^{xxviii} As Mehmood has described the situation, with the separation of East Pakistan on 16 December 1971, General Yahya Khan had no choice but to handover the power to the Z. A. Bhutto.^{xxix} Rizvi says that once East Pakistan was lost, they had no choice but to hand over the reins of government to Z. A. Bhutto, leader of the major political party in West Pakistan.^{xxx} Ziring also commented that the generals were ready to pass the mantle of governance to elected civilian officials.^{xxxi} Although, the military was discredited after a defeat at the hands of its enemy,^{xxxii} yet, in the later period, the services chiefs were not ready to accept interference of the democratic civilian government of Z. A. Bhutto in its internal matters and therefore posed resistance against his decisions.

For the third time, the military intervention was on July 5, 1977 by the Army Chief General Ziaul Haq.^{xxxiii} He exploited the superior judiciary for the legitimisation

of his toppling of the elected government of Prime Minister Z. A. Bhutto under the Doctrine of State Necessity. As Khan describes that when the Supreme Court re-assembled on 25 September 1977 Justice Anwarul Haq had taken over as Chief Justice of Pakistan. The Chief Justice (Justice Anwarul Haq) concluded that the extra constitutional step taken by the military was justified based on State Necessity.^{xxxiv} Ayesha Jalal has critically analysed General Ziaul Haq's handling of the judiciary for being fragile but strategically vital target. He restricted the jurisdiction of courts to hear petitions against the right of Habeas Corpus, reviewing any of the military regime's actions including that of imposition of martial law and arbitrarily replaced the unwanted judges.^{xxxv} Hussain analysed that during eight years of martial law (1977-1985), the most countervailing centres of authority were substantially weakened in relation to the Army. For instance, the civil service, judiciary, media and politicians were institutionally weakened and divided than before in the history of Pakistan.^{xxxvi}

General Ziaul Haq was more confident in transfer of power when he dictated his terms to share the powers, first through legitimising his rule by holding a presidential referendum and then conducting non-party based elections for the National and Provincial Assemblies to bring in power a like-minded civilian set up. As Rizvi described, the process of civilianization of military rule was initiated with the announcement of August 12, 1983 plan by General Ziaul Haq to hold elections and transfer of power to the elected representatives. A referendum was hurriedly conducted in December 1984, a positive vote to which was latter on interpreted as approval for General Ziaul Haq to stay as president for the next five years. Rizvi further commented that the joint session of both the houses of parliament was held on 23 March 1985 and Ziaul Haq took the oath as an elected President for a term of five years (1985-90).^{xxxvii}

It was the discretionary power of General Ziaul Haq to appoint Muhammad Khan Junejo as Prime Minister who, later, obtained a unanimous vote of confidence from the National Assembly. However, the martial law was not lifted,^{xxxviii} until the parliament granted approval to the Eighth Constitutional Amendment. As Burki has stated, Pakistan's longest period of martial law lasted over seven years, from July 5, 1977 to December 30, 1985.^{xxxix} Mahmood noted that the most important link in chain

of power transfer was President Ziaul Haq's own continuance and survival for which he did not intend to depend on the newly elected assemblies. He was determined to keep his grip tight on power politics like a powerful ruler. After all, what he had conceded after ruling the country for about eight years was not transfer of power but sharing of authority with the elected representatives of the people.^{xi}

After lifting the martial law, a quasi-civilianised rule was led by a submissive premier being supervised by a serving army chief as head of the state to ensure that the elected government of Prime Minister Muhammad Khan Junejo functions within the parameters chalked out by the military. According to Burki, during 1985, Prime Minister Junejo enhanced his prestige and power. By 1988, General Ziaul Haq and Junejo were on a collision course. A succession of events in the first half of 1988 served to weaken Ziaul Haq. Therefore, he dissolved the national and provincial assemblies on May 29, 1988 and dismissed Junejo Cabinet on the same day.^{xli} Rizvi also says that as the personal and institutional security mounted and Muhammad Khan Junejo asserted his autonomy in decision making, Ziaul Haq felt it a right moment to exercise his authority under Article 58(2)(b) of the 1973 Constitution. On 29 May 1988, he removed the civilian government and dismissed the elected assembly.^{xlii}

After the death of General Ziaul Haq in a plane explosion on 17th August 1988, the superior courts played an active role in the restoration of democracy and the military also decided to let the democracy work by adopting a new pattern of military intervention in civilian affairs short of a takeover. Burki upholds the role of judiciary that the years 1988 and 1989 were a period of intense judicial activism reflected in a series of judgements. The superior courts redeemed themselves in the eyes of the common citizens by their active role in restoring the basic rights of the people to elect a party-based government of their own choice. Eventually the judicial activism reached to its peak in January 1989.^{xliii} However, Rizvi analyses that the military's decision to stay on the side-lines and support the democratic process was a tactical withdrawal based on a realistic assessment of the political situation and did not represent their exit from the political domain or their inability to play an effective role. Before assuming power as Prime Minister, Benazir Bhutto had to ensure to the Army Chief General Aslam Baig that her civilian government would respect the military's interests and concerns.^{xliv} Jalal has analysed that despite an absolute

majority in the parliament, Nawaz Sharif also found himself confronting many of the same risks which had led to the early demise of the government of Benazir Bhutto. The position of premier soon proved to be difficult for both in a power-sharing arrangement with an interventionist president and a formidable military.^{xlvi}

According to Aziz, the experiences of Benazir Bhutto's two terms in office and the first term of Nawaz Sharif showed that the civilian governments could not disregard the sensitivities of the military for foreign policy, defence and nuclear issue. The military's decisive role in changing the political balance in the polity was once again demonstrated during Nawaz Sharif's second term (1997-1999). Therefore, the expectation that indirect intervention of the military could be confronted with the power of the parliament only led to repeal of 8th Constitutional Amendment.^{xlvi} The government's strategy to use its parliamentary majority to strengthen the position of Prime Minister caused the executive-judiciary conflict. It led to confrontation between the judiciary and the executive i.e. Chief Justice and the President, on the one side, and the premier, on the other, thereby further aggravating the polity with serious political crisis. What salvaged the position of Nawaz Sharif was the decision of the Army Chief to let his government stay-on.^{xlvi} It is quite clear that only a military supported civilian government could survive in the post-Zia years. When the military chose to be neutral player during the power politics among the civilian institutions, the president had to resign; the case of Farooq Laghari is a clear example.

Apparently, the elected government of Nawaz Sharif acquired strength in his second term when his earlier fragile majority got converted into a strong majority in the parliament. However, the weakness of prime minister was exposed when Nawaz Sharif could not act against the Army Chief upon his expediency in Kargil^{xlvi} without taking his civilian government into confidence. Contrary to this, when the assertive army chief was removed, the military retaliated in the form of another military takeover.^{xlvi} Khan has criticised the role of judiciary and, according to him, the petitions against the military coup and the dissolution of the assemblies were heard by a 12 members Bench of the Supreme Court which was presided over by Chief Justice Irshad Hassan Khan. The Court once again went out of the way and justified the military coup of 12th October 1999.¹

Keeping in view the theories on civil-military relations, the three Martial Laws were imposed in different circumstances in Pakistan. Each time the military presented an explanation that a power vacuum existed in the country and that the military had to intervene in inevitable circumstances. Each time, the transfer of power to the elected government occurred in different circumstances. The transfer of power during second Martial Law of 1969 was an abdicated type because the military had faced a humiliating surrender to its traditional enemy India. It has been analysed that after the 1971 war, a defeated and demoralised military was rational in choosing a withdrawal from power to avoid further humiliation of its institutional image. However, the military proved to be still creating resistance against the interference in its internal affairs thus posing resistance against the decisions of the civilian government of Z. A. Bhutto (1972-1977).

Moreover, the military could strategically interact with civilian government for preserving its corporate interests such as the release of ninety thousand soldiers and officers who were in Indian custody. Z. A. Bhutto as a politician, on his part, saw his strength in the weaknesses of military which had allowed him to assume the role of the leader of a war-torn country, although temporarily. To reduce intervention of the military in politics, it was important to deprive it of the excuses which it had been using as justification to be the guardian of the nation. Although, the process of transfer of power had been speedy and unconditional this time but the political party that assumed the power because of an electoral process could not establish a political set up based on democratic principles mainly due to the feudal style of politics of its leader.

The other two types of transfer of power were planned and the military had voluntarily decided to relinquish power because of a mixture of dictated and pact types. The martial law regime of General Ayub Khan was against the immediate withdrawal and chose to legitimize its rule through referendum. Then Ayub Khan promulgated a constitution of his own choice followed by indirect elections to the National Assembly and established a party to civilianize his military regime with the obvious support base from military. In case of martial law of 1977, General Ziaul Haq proved more confident and dictated his conditions for relinquishing power. Firstly, he was successful in legitimizing his regime through a referendum and then by holding

party less elections to establish a powerless national assembly and a quazi-civilian government with a serving army chief as head of the state.

During his martial law regime, political arrangements were restructured and alliances were made with likeminded political elites who were willing to secure the organisational preferences and continuity of major policies of the military. In the absence of established political institutions immediately after the end of military rule, the political management became difficult for any elected government since the military officers retained top decision-making positions. After the death of General Ziaul Haq, every civilian government faced a legitimacy crisis. The elected governments wanted to assert independence but at the same time could not go against the agenda set by the military high command. The fragmented and confronting civilian institutions further complicated the process of democratic consolidation and undermined the strength of the elected governments in post-Ziaul Haq era.

The countries that have faced dictatorial rule are similar in many ways; being under a colonial rule, with slow economic development, strategically important geographic position, weak political culture and dearth of competent political leadership. The military interventions in Pakistan are a mix of all theories and types mentioned earlier. The strategic position of Pakistan with less friends and more enemies geographically, weak democratic culture, and corrupt political system with low education ratio, and weakness in the institutions like judiciary has given a self-assumed right to the military for trespassing in politics. It may be concluded that the receptiveness of the political leaders and by the people of Pakistan for military interventions, have allowed the military to intervene in politics. The first military takeover is based on the Theory of Coercion where a country in a transitional period and with a weak democratic system, was vulnerable enough to be removed by the military. While, the later martial laws were based on the doctrine of necessity which were given acceptance by the supreme judiciary and weak democratic framework. The corporate interest is yet another coercion that is used by the military high command.

1.3 Statement of the Problem

Pakistan's ambition to become a democratic entity could not materialize even after a long period of seven decades. The relations between civilian governments and military in Pakistan have never been smooth and sound. These relations have passed through several political and constitutional challenges due to various factors responsible for it. Moreover, whenever, there emerged any political and constitutional crisis, military's assistance has been sought for its solution. However, in grave cases, the military has preferred to take over the power. It was happened five times so far, i.e. in 1958, 1969, 1977, 1999 and 2007. However, the period covered by topic of this research has been selected because it represents unique instance of direct military intervention and withdrawal in Pakistan. This research study assesses that how military and judiciary have halted the course of democratic process in Pakistan between the period from 1977 to 1999. The higher judiciary has always been asked to play its role to resolve the constitutional problems in Pakistan. The judgments of superior judiciary in such matters has far reaching negative effects on the stability of political systems, on the one hand, and the image of judiciary in the eyes of people, on the other. It can be observed that the judiciary while passing the judgments, looked to the people in power than the principle of merit and justice.

As far as civilian governments are concerned, they have also not played any commendable role in democratic consolidation. Inefficient and incapable civilian governments led to the chances for military interventions in the political business of the state. The purpose of this research study therefore is to analyse the relations between the civilian governments and the military leaders in the backdrop of the superior courts in Pakistan in the wake of military's gaining control of power followed by their initiatives towards democratization during the period from 1977 to 1999. The period under study in this thesis is unique in the sense that it starts with a military intervention by General Ziaul Haq who dissolved the popularly elected government of Z. A. Bhutto, followed by the longest martial law regime, a process of democratic consolidation that ended with the coming into power of General Pervaiz Musharraf who also dismantled the elected government of Nawaz Sharif. Effects of the Court judgements legitimizing military's taking control of power and the resulting political crisis, the tension within the judiciary, and between courts and other state institutions, is analysed in this study.

In short, the statement of the problem may be summarised in the following points:

- The civilian governments have not played any commendable role in political and constitutional development in Pakistan.
- Assistance of the military has always been sought during political and constitutional crisis in Pakistan.
- The military in most of the cases has preferred to take over the power from civilian governments.
- The judiciary has also been asked to play its role in resolving constitutional problems in Pakistan.
- The judgments of judiciary in such matters has far reaching negative effects on the stability of political systems.
- The judiciary while passing the judgments, looked to the people in power and demand of the public than the principle of merit and justice.

1.4 Aims and Objectives of the Study

The study focuses on the following main objectives:

- a) To identify the causes of direct and indirect military interventions in Pakistan's politics;
- b) To examine the role of judiciary in questioning the military's taking control of power;
- c) To examine the credibility of civilian governments established by the military based on power sharing arrangement;
- d) To analyse the role of judiciary in the restoration as well as streamlining of democracy in Pakistan.

1.5 Research Questions

Why does the military intervene? What factors compel them for withdrawal? These questions are not new to the scholarly literature. However, the thesis analyses relations between civilian governments and the military in the context of the role played by higher judiciary after the third military intervention in July 1977 and after

the authority had been transferred to civilian governments until another military intervention in October 1999. The research study focuses on the following three major sets of issues.

The first one is; how does the military succeed in taking control and consolidating its authority in a non-professional field? Does the judiciary counteract military's taking control of power? Has judiciary ever been successful in getting a political setup restored that is dismantled by the military? How does the military transform judicial verdict of legitimacy to its establishment of a dictatorial regime?

Secondly, why don't the military rulers stay longer in power? What considerations and factors shape decision of military rulers to change the nature of their rule? Instead of stepping down from power, why does the military evolve a power sharing arrangement with the civilians? Why do the civilians agree to the power sharing scheme which tilts decisively in favour of the military? What role does the judiciary play in questioning military's interruption of a normal political business?

Thirdly, how far the civilian regimes established by the military fulfil public expectations in terms of their being genuine and public spirited? How does the military secure its corporate interests after transfer power to the civilians? What role does the judiciary play in giving strength to quasi-civilian and quasi-parliamentary set up?

To summarise, the study seeks to answer the following questions:

- a) What causes military intervention in the political process and taking control of power in Pakistan?
- b) What has been the role of judiciary in counteracting military's capturing of political power in Pakistan?
- c) How does the judiciary react to the military when they prolong their rule in Pakistan?
- d) What role does the judiciary play in maintaining checks and balances in the working of an elected setup in Pakistan?

1.6 Hypotheses

The following hypotheses have been tested:

- a) Extreme political polarization provides an opportunity of direct/indirect military intervention in the political affairs of Pakistan.
- b) Failure to handle political affairs by the civilian governments and the resultant crises compels the judiciary to endorse military's taking control of power.

1.7 Significance of the Study

A number of books have been written by eminent foreign and national authors on 'civil military relations' and the 'role of judiciary' in Pakistan separately. They have focussed specifically on the political instability, causes of military interventions and working of military governments, paying little heed to the context of role played by higher judiciary in the relations between civilian governments and the military in Pakistan. The literature which is available about this topic of research is in a scattered form. Therefore, keeping in view its importance, there is need of a comprehensive academic work on the topic. The theme of this study is unique and of great importance in relevance to the politics of Pakistan ever since the imposition of first martial law in 1958.

This research study examines the factors responsible for instability of an elected government, military intervention, the transfer of authority to civilian government, consolidation of democracy and military interference in 1990s and the role played by the superior judiciary in correcting the wrongs. Findings of this research study will certainly help design a strategy to seek solution to the problems which cause political disorder and ultimately culminate into military adventurism. The role of higher judiciary in legitimising military intervention and providing a legal cover to their direct rule have also been analysed. Its role in the transfer of power from military to the civilians and the activism they have demonstrated during civilian rule has also been covered in this study. The research proposes a set of recommendations which, if adopted, will bring strength and stability to the democratic process in future.

Moreover, this thesis examines the damages done to the state institutions such as parliament, the executive and the judiciary by the initiatives of military regimes,

particularly to their independence and autonomy in decision making. Apart from curtailing the supremacy of the parliament, the powers of the civil governments and the jurisdiction of the higher judiciary, arbitrary removal of the prime ministers, the cabinets, the president, and the judges have been analysed. It also examines the blatant interference in the proceedings of the higher courts, particularly damaging the credibility of the Supreme Court, and the arbitrary changes introduced by the military dictator in the superior judiciary through amending the Constitution.

1.8 Methodology

A mixed method approach has been adopted for the conduction of this exploratory research. The study is descriptive, theoretical and qualitative and the data collection for this study included both primary and secondary sources. The primary source is an important and valuable source to conduct and analyse the research. The primary sources included: the newspapers and archives of official documents of the government, the legislatures and the judiciary. Newspapers were consulted mainly for analysing news items and public statement of government and public office holders. In this regard, the researcher visited various libraries such as the National Library of Pakistan and other state institutions to obtain relevant documents. Among the federal institutions of Pakistan included: National Assembly, Senate, Prime Minister House and National Documentation Centre at Cabinet Division. Moreover, the Peshawar High Court, Provincial Assembly of Khyber Pakhtunkhwa, and Archives of Peshawar were also visited where the scholar found ample material mostly relevant to the topics of research.

The semi-structured interviews of prominent figures were also conducted. A discussion guide or interview schedule was developed for conducting the key informant interviews and obtaining knowledge from concerned quarters. As the topic is related to the recent past, the researcher contacted experts known for their balanced views on the questions under consideration. Interviews were conducted with politicians, advocates of the superior courts, retired military personnel and those who were either involved in the processes or were witnesses to the problem under investigation. Conduction of interviews with relevant personnel was not unfortunately easy task to be achieved. Taking time, especially from the seasoned politicians, military commanders and advocates of the higher judiciary was difficult, because it

needed several visits to get a respondent available and willing for interview, especially on this topic.

The theoretical and historical aspects of the study were dealt with through secondary resources, such as reference books, journal articles, newspaper articles, relevant theses and reports. The secondary sources included both published and unpublished material on the subject. Analysis of statements, books, journals, magazines, gazetteers, newspapers, government records, etc., was also made for the purpose. Secondary data has been extensively used in this research which has many advantages in terms of availability, time and cost. However, care has been made by the scholar regarding the reliability and authenticity of the secondary data used in this research. Only the work of prominent and reliable scholars and researchers has been consulted for an objective study of this thesis supplemented with existing primary record and data gathered during qualitative interviews.

The researcher also spent time at The University of Texas at Austin (UT Austin), United States and benefitted from the methods of study and research being used by the western students, scholars and researchers. To avail the opportunity of an external research visit through foreign funding, the scholar regularly contacted different experts throughout the world on this study. However, it was very difficult to find and convince a most suitable foreign supervisor having interest in this topic. The efforts of scholar bore fruits in February 2014 when a renowned supervisor of the said University agreed to accept the scholar as Visiting Scholar. Subsequently, the HEC Pakistan awarded scholarship to the scholar for the period November 2014 to April 2015. Therefore, obtaining an acceptance from a willing foreign supervisor, the required documents from the said University for visa, getting visa from embassy of United States and release of funds from HEC Pakistan took more than one year for the scholar take-off for the target destination.

By that time, the scholar had completed first draft of the thesis duly evaluated by the supervisor at University of Peshawar. While conducting further study for a quality thesis under the foreign supervisor at UT Austin, the scholar found ample material in the libraries of the UT Austin. The scholar was granted access the online material available at UT Austin. Interestingly, the online library was also linked with other renowned universities and public-sector libraries. Therefore, in case of non-

availability in UT libraries, the scholar could generate an online request for the documents and material available in those libraries and documentation centres. This facility proved helpful in obtaining maximum material available within the US thus saving time and cost for the scholar. The discussions with graduate students, faculty members, researchers and foreign visiting scholars added to the knowledge of researcher and provided clarity on certain aspects of the study. These interactive sessions enabled the researcher to finalise his thesis with updated knowledge, approaches and methodologies that he learnt during the study program at the UT Austin.

Limitations of the study included mostly the unwillingness of the most relevant actors of the period under study to be interviewed. The main actors involved prominent political leaders, heads of mainstream political parties, former services chiefs, retired military generals, heads of intelligence agencies, and retired justices and renowned lawyers of the Supreme Court of Pakistan. Though, the scholar was successful in interviewing two-three person from the groups, most of the relevant persons were either not accessible or found unwilling to provide their viewpoint on the topic. However, still the scholar was successful in obtaining first-hand information and views of key personnel from these groups in newspapers, magazines and talk-shows of public and private sector televisions. The data gathered from these sources and the qualitative interviews have been analysed labelling the relevant pieces and using the post-coding method. The scholar has tried his best to be unbiased and open minded during analysing this data so that the most relevant and authentic information could be replicated in the dissertations.

1.9 Organisation of the Thesis

This study consists of Introduction, Six Major Chapters, and Conclusion. Details appear below:

Chapter # 02 is a detailed review of the existing literature, in general and in relevance to Pakistan. It narrates extensively the scholarly work produced by renowned international scholars and researchers. It provides a detailed overview of the relevant literature on civil-military relations, and the role of judiciary in dealing with the civilian governments for promotion of democracy and the military regimes in

taking over the governments and consolidation of their power. The chapter also explains how the theoretical literature examined by the scholar is in relevance to the circumstances in Pakistan and how it can be contextualised to the case of Pakistan with reference to the period under review.

Chapter # 03 consists of the historical background of the civil-military relations in Pakistan during the first three decades (1947-1976) along with a brief description of the pattern of such relations during the British period. Despite having her first Constitution in 1956 with a parliamentary form of government, Pakistan could not attain political stability. The first military intervention against democratic government in 1958, Judiciary's readiness to legitimise the coup and the first transfer of power from military to civilians along with restoration of fundamental rights have also been critically analysed. Although the Constitution of 1962 introduced presidential system, yet it could not restrain the people from resistance which emerged against the dictatorial regime of Ayub Khan and termed it a one-man rule. The second martial law, political crisis in East Pakistan, the transfer of power to elected government, the role of higher judiciary during this period is analysed. Moreover, the institution building during Bhutto era, reforms in military's command structure, role of political parties especially the opposition, constitutional amendments to curtail the influence of military and independence of judiciary also constitute parts of this chapter.

Chapter # 04 focuses on the imposition of third martial law and its continuation till the mid of 1980s. It deals with the general elections of 1977, the agitation and handling of the opposition by the Bhutto government. The chapter analyses the reasons for the imposition of third martial law, military regimes' punitive actions against the opponents. It also evaluates the role of judiciary in the legitimization of martial law, the Nusrat Bhutto Case, the trial and execution of Z. A. Bhutto and the partnership of military with the likeminded politicians. In fact, the dynamics involved in the consolidation of power by military regime included the accountability, Islamisation program, amendments to 1973 Constitution, the imposition of Provisional Constitution Order (PCO), handling of the Judiciary and the opposition are part of this chapter. In short, this chapter discusses all the measures

taken by the military regime to stay in power for a longer period against their initial plan of holding free and fair elections.

Chapter # 05 gives an overview as to how the civilian stakeholders vis-à-vis the military consolidated efforts to do away with the martial law regime in Pakistan. In other words, it focuses on how the martial law regime was pressurised to share their power with the civilians which the former did but with reluctance and a very slow pace. The chapter deals with the resistance launched by the MRD, the referendum of 1984 for Islamization program and legitimacy to Ziaul Haq as President of Pakistan, party less general elections of 1985, Revival of the Constitution Order (RCO), Eighth Constitutional Amendment ensuring protection to the actions taken by military, and the lifting of martial law constitute parts of this chapter. It also evaluates the quasi civilian set up under Muhammad Khan Junejo, its working relationship with the military especially in relation to Afghan policy, the causes of his removal as well as dissolution of the elected assemblies and the sudden death of General Ziaul Haq in August 1988. The announcement of fresh party based elections along with the role played by the Superior Courts in the restoration of democracy in Pakistan makes the concluding parts of the chapter.

Chapter # 06 deals with the holding of general elections in the post Ziaul Haq period and the process of transfer of power to the elected representatives. It focuses on the governments of Benazir Bhutto (1988-1990) and Nawaz Sharif (1990-1993), who ruled Pakistan one after another for their first term each but failing to govern for the mandated term. This was mainly the period of powerful Ghulam Ishaq Khan as head of the state. It also studies the power sharing arrangement which evolved in a new pattern of civil-military relations in an extra-constitutional understanding between the military and civilian executive. It further focuses on the role of judiciary for democratic consolidation in Pakistan during the post Ziaul Haq period. It analyses that how the military, ISI and the president controlled that political saga and did not let the elected governments work independently. The period is full of exigencies of president to topple democratic governments one after another with the backing of the military in backdrop of a controversial yet significant role played by the judiciary.

Chapter # 07 studies the second terms of offices of both Benazir Bhutto and Nawaz Sharif again under the powerful president Farooq Ahmad Khan Leghari and

then Muhammad Rafiq Tarar as titular head of the state. It discusses the shift of powers from the president to the parliament and ultimately to the office of prime minister with the abolition of Eighth Constitutional Amendment. It also evaluates the restoration of powers of the prime minister after the annulment of 8th Constitutional Amendment and its impact on the relationship among three state organs. This chapter further examines the political crisis, strained relations of elected governments with the military and within the executive itself i.e., between the president and the prime minister. The judicial activism under Justice Sajjad Ali Shah and its effects on relationship with the executive that led to the fourth military takeover in October 1999 by General Pervaiz Musharraf is also examined. Unfortunately, the governance and law and order by the civilian government during this period had not been good to the extent that the people welcomed military rule and the judiciary readily validate the move once again based on Law of Necessity.

Chapter # 08 is the conclusion which analyses the data collected from primary and secondary sources, including key informant interviews discussed throughout the previous four chapters which makes main crux of the thesis. The analysis is based on political and constitutional history of Pakistan, world acclaimed theoretical manifestation of democracy and military rule by the political thinkers in lieu with democracy and roles played by the various stakeholders in the politics of Pakistan and the superior judiciary from 1977 to 1999. The conclusion shows that none of the stakeholders in the country including the electorate have played a positive and effective role for the consolidation of democracy in Pakistan. However, based on the findings of the study, a set of recommendations has been put forward, the adoption of which will, hopefully, bring a positive change in the political affairs of Pakistan.

Notes and References:

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- ⁱ Hassan Askari Rizvi, *Military and Politics in Pakistan: 1947-1997* (Lahore: Progressive Publishers, 2000), 78.
- ⁱⁱ Mohammad Waseem, *Politics and the State in Pakistan* (Islamabad: Progressive Publishers, 2007), 130-31.
- ⁱⁱⁱ Leo E. Rose and D. Hugh Evans, "Pakistan's Enduring Experiment," *Democracy* 8.1 (1997), 83-96.
- ^{iv} Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge: Cambridge University Press, 1995), 174.
- ^v Tariq Ali, *The Clash of Fundamentalism: Crusades, Jihads and Modernity*, (London: Verso, 2002), 235.
- ^{vi} Husain Haqqani, *Pakistan: Between Mosque and Military*, (Lahore: Vanguard, 2005), 78.
- ^{vii} For a discussion of the relationship between democracy and civilian supremacy over the military, and the effects of military intervention on Pakistan. For details see, Hassan Askari Rizvi, The Paradox of Military Rule in Pakistan. *Asian Survey* 24.5 (1984): 534-555.
- ^{viii} Ayesha Jalal, *Democracy and Authoritarianism*, 43.
- ^{ix} Hassan Askari Rizvi, *Military and Politics*, 28.
- ^x Iqbal S. Hussain, *Pakistan: From Dictatorship to Democracy* (Lahore: Meraj Printers, 2007), 3.
- ^{xi} Paula R. Newberg, *Judging the State: Courts and Constitutional Politics in Pakistan* (Cambridge: Cambridge University Press, 1995), 5.
- ^{xii} Robert Prinkley, *Democracy in the Third World* (Delhi: Viva Books, 2004), 194.
- ^{xiii} Paula R. Newberg, *Judging the State: Courts*, 5.
- ^{xiv} Ayesha Jalal, *Democracy and Authoritarianism*, 51-4.
- ^{xv} Mercedes Padrino, *Women in Politics: Benazir Bhutto* (Philadelphia: Chelsea House Publishers, 2004), 5.
- ^{xvi} Hassan Askari Rizvi, *Military and Politics*, 74-75.
- ^{xvii} President Iskandar Mirza declared imposition of martial law on October 8, 1958 and General Ayub Khan was appointed as Chief Martial Law Administrator (CMLA). For details see, Hassan Askari Rizvi, 85.
- ^{xviii} Hamid Khan, *Constitutional & Political History of Pakistan*. 2nd ed. (Karachi: Oxford University Press, 2009), 128.
- ^{xix} Hassan Askari Rizvi, *Military and Politics*, 97.
- ^{xx} Lawrence Ziring, *Pakistan in the Twentieth Century: A Political History* (Karachi: Oxford University Press, 2006), 271-73.
- ^{xxi} President Ayub Khan handed over power to the Army Chief General Yahya Khan on March 25, 1969. He imposed martial law with immediate effect and assumed the office of CMLA. For details see, Lawrence Ziring, 115.
- ^{xxii} Lawrence Ziring, 179-80.
- ^{xxiii} Ayesha Jalal, *Democracy and Authoritarianism in South Asia* (Cambridge: Cambridge University Press, 1996), 61.
- ^{xxiv} Lawrence Ziring, *Pakistan in the Twentieth Century*, 313-15.
- ^{xxv} *Ibid.*, 109-13.
- ^{xxvi} Agha Muhammad Ali was head of the civilian Intelligence Bureau.
- ^{xxvii} Altaf Gohar, *Ayub Khan: Pakistan's First Military Ruler* (Lahore: Sang-e-Meel Publications, 1993), 476-77.
- ^{xxviii} Hussain Haqqani (2005), *op. cit.*, p.65.
- ^{xxix} Safdar Mahmood, *Pakistan: Political Roots and Development, 1947-99* (Karachi: Oxford University Press, 2003), 367.
- ^{xxx} Hassan Askari Rizvi, *Military and Politics*, 10.
- ^{xxxi} Lawrence Ziring, *Pakistan in the Twentieth Century*, 370.
- ^{xxxii} Pakistan Army surrendered in the Indo-Pak war of 1971 on December 16, 1971. The secession of East Pakistan resulted in the creation of an independent Bangladesh. For details see, Hassan Askari Rizvi, *Military and Politics*, 151.
- ^{xxxiii} The Army Chief General Ziaul Haq took over the administration of the country on July 5, 1977 and assumed the office of CMLA. For details see, Hassan Askari Rizvi, 193.
- ^{xxxiv} Hamid Khan, *Constitutional & Political History*, 335.

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- ^{xxxv} Ayesha Jalal, *Democracy and Authoritarianism*, 103-04.
- ^{xxxvi} Mushahid Hussain, *Pakistan's Politics: The Zia Years* (Lahore: Progressive Publishers, 1990), 113.
- ^{xxxvii} Hassan Askari Rizvi, *Military and Politics*, 260-64.
- ^{xxxviii} *Ibid.*, 260-64.
- ^{xxxix} Shahid Javed Burki, *Pakistan under the Military: Eleven Years of Zia* (Oxford: Westview Press, 1991), 70.
- ^{xl} Safdar Mahmood, *Pakistan: Political Roots and Development, 1947-99* (Karachi: Oxford University Press, 2003), 95.
- ^{xli} Shahid Javed Burki, *Pakistan under the Military*, 71.
- ^{xlii} Hassan Askari Rizvi, *Military and Politics*, 266.
- ^{xliii} Shahid Javed Burki, *Pakistan under the Military*, 73.
- ^{xliv} Hassan Askari Rizvi, *Military and Politics*, 266.
- ^{xlv} Ayesha Jalal, *Democracy and Authoritarianism*, 112.
- ^{xlvi} The thirteenth amendment in the Constitution of 1973 was passed in 1997, which transferred all the presidential powers including the power of dissolution of the national assembly, back to the prime minister. For details see, Sartaj Aziz, *Between Dreams and Realities: Some Milestones in Pakistan's History* (Karachi: Oxford University Press, 2009), 213.
- ^{xlvii} Hassan Askari Rizvi, *Military and Politics*, 277.
- ^{xlviii} The Indo-Pak war on Kargil started in May 1999 and ended in July 1999 in the Kargil area in District of Kashmir along the Line of Control. For details see, Sartaj Aziz, *Between Dreams and Realities*, 248.
- ^{xliv} The Army took over the powers of the state on October 12, 1999 and government of elected Prime Minister Nawaz Sharif was removed. Army Chief General Pervez Musharraf assumed the office of the Chief Executive of Pakistan on October 14, 1999. For details see, Hamid Khan, *Constitutional & Political History*, 363.
- ¹ *Ibid.*, 492-93.

Chapter - II

LITERATURE REVIEW

This chapter is a detailed review of the existing literature, in general, and in relevance to Pakistan. It narrates extensively the scholarly research work produced by renowned international scholars and researchers. This chapter provides a detailed overview of the relevant literature on civil-military relations, and the role of judiciary in dealing with the civilian governments for promotion of democracy and the military regimes in taking over the governments and consolidation of their power. The review of the literature on democracy versus military rule explains the characteristics of military intervention in politics, reasons for intervention and types of military coups and aspects of withdrawal. The chapter also explains how the theoretical literature examined by the scholar is in relevance to the circumstances in Pakistan and how it can be contextualised to the case of Pakistan with reference to the period under review.

2.1 Why the Military Intervenes in Politics

The existing literature on military's taking control of power suggests that the military does so because ill-governance, corruption of the civilian government, anarchy and deteriorating capacity of the civilians to run the government for the betterment of the people. The literature also examines the reasons and types of withdrawals which, by and large, are decided upon by the military itself. No other institution can make the military to step down and allow the people to choose their rulers. The theorists have opined that military takes the advantage of the absence of strong political leadership and failure of institutions based on their personal assumption. In some cases, the military is invited by the politicians to takeover when power struggle among them reaches to the climax. The political theorists argue that there is always a vacuum in the governing system which, in case of the developing countries, is filled by the military as a saviour of the country. In some cases, the countries which have suffered from the coups have a strategic placement geographically that allows military to takeover and rescue the system. Other similarity

is the colonialism as most of these countries had been colonies and have been in the making of democracies.

A majority of the Third World countries in Asia, Africa and Latin America have been ruled by the military and some of them are still under military rule. Laswell was a pioneer in the field of civil-military relations when he presented the 'Theory of Garrison State.' He stated that the centralisation of power in the hands of the military and the executive ultimately form the 'garrison state.' It would not only undermine democracy but would also result in different forms of authoritarian rule.¹ Contrary to this theory, Huntington explains military as an institution in the western democratic systems. He argues that professionalism in the military is a key to its autonomy as an institution and that it helps maintain control of the civilian government over them. He contends that modern militaries as institutions are led by professional officers. He also explains professionalism as a special kind of vocation which is characterized by expertise, responsibility and corporateness.¹ The author explains that a professional military devotes its total energies for improving its fighting capabilities and professional work under a legitimate civilian authority within the state. This shows that professionalism maintains a "politically sterile and neutral" role of military to be ready to serve the state.¹

Huntington also believes that military intervention in politics in the third world countries has been the result of politicisation of social forces in other state institutions. The author holds the view that due to the absence of strong civilian institutions to mediate, refine and moderate the group political actions coupled with the lack of professionalism in officers' corps stimulate praetorianism in a state. The lack of willingness of the political institutions to cope with increasing needs of social mobilisation leads to chaos which, in turn, increases the likelihood of military intervention.¹ The author opines that the military as an institution is the protector of the middle-class citizens which implements and economic reforms for the broader level national integration. To him, the causes of military intervention lie not in the nature of the military, but is a regular feature of the society.¹ Thus Huntington analyses that the military intervention in politics occurs only in societies which are transitional in character coupled with economic backwardness, ethnic and social conflicts and weak civilian institutions.¹ Huntington asserts that military intervenes

when the social conflict is transformed into street politics and society at large is not contended with the civilian regime. Military is the only force that possesses the capacity to restore the order, at least, temporarily but most often, halts political process.¹ Huntington's theories have been widely tested by the ambitious military commanders for direct takeover of political government and present the justification that the power vacuum particularly the inability of political institutions, leaving no option with the military except to intervene in the political affairs.

Stephen used the theories of Huntington and Laswell to explain the praetorian behaviour of military in Latin America. He stated that the importance of security in South America increased due to the cold war thus gave rise to 'new professionalism,' i.e. a new professional role for military officers.¹ In this situation, the military projected itself as the protector of the state and the guardian of domestic order against leftist revolutionary encroachments.¹ Janowitz examines that among the characteristics of military include internal cohesion and organisational unity along with means and professionalism being the distinction that provide military a greater ability to deal with political instability in comparison to other state institutions. The author asserts that the presence of professionalism and will, facilitates the military in gaining skills that enable the military commanders, though for a short period, to control and challenge the elected government.¹ Thus he describes the organizational characteristics of military as a strong hold than any other outside force that enables it to influence the political institutions of the state. Theorists like Kolkowicz analysed the Soviet military dynamics and endorsed the viewpoint of his contemporaries that the fast-paced change in modern warfare has transformed professional military into a 'Strong Interest Group.'¹

The second school of thought focused on the nature of society as a reason for military rule. Finer analyses that how the military intervenes in politics from backdoor. He argues that the nature of military intervention is different for every society. The 'indirect limited' intervention means that the military controls the civilian government intermittently and it aims to secure limited objectives. The 'indirect complete' intervention means that the military continues to control all the activities of the state without taking over the elected government formally. Finer explains that the means through which military intervention are made can be 'coup

method' or 'coup threat method (seizure).' Finer's two kinds of direct military rule are; the rule by military generals in which the head of the state could be from among the military or the senior military officers are posted on key positions. The quasi-civilian military rule includes the military man as head of the state supported by one or more political parties.¹

Finer specifies that the subjective and objective factors are an opportunity for the military intervention in the political affairs. Disposition of the military to intervene in political affairs can be the national interest, corporate self-interest, social self-interest (especially ethnic or class) and individual self-interest. The military as an institution believes itself as a custodian of the national interests and considers it as their responsibility to perform political duty. Therefore, on the one side, the military rules the country for the establishment of a political agenda while, on the other side, the military is seen as an arbitrator or veto power that will intervene if a political decision or certain public policy of the elected governments is seen to be a threat to the interests of the state.¹ Military intervention on the ground of protecting the national interest is mostly used to justify and/or hide military's real motives, i.e. self-interest and corporate interest.

Finer opines that the objective conditions and the ground realities of a country should be assessed by the military before making the decision to intervene in the civilian affairs. These are considered as the "Opportunities to Intervene" which include legitimacy problem faced by the elected government, their dependence on the military, the effects of internal security situation of the state, and the image of the military vis-à-vis the civilian government. Another reason may also be that the civilian government is discredited because of corruption, economic failings, law and order, and political unrest etc. Finer analyses that the motive of preservation of autonomy of the military as an institution is one of the main reasons for military intervention which is widely used across the world as powerful justification. For Finer, the essence is the disposition to intervene based on emotion; that some of the militaries, like individuals, act blindly; unlike majority of the people who, prior to doing so, does some sort of rational calculation. The foreign policy decisions of the civilian government involve huge military expenditures, nuclear threat, and the increasing technicality of modern warfare system. Therefore, it makes the decisions of

elected government much difficult since majority of them may not be able to accurately assess the tactics and strategies of the militaries.¹

The instances of ‘internal situation for military intervention’ would be law and order, and political unrest, labelled as overt, latent, chronic or power-vacuum situations, due to which the military must intervene as an alternate law enforcement agency. This domestic security breakdown increases trust deficit of the people on the civil government and improves the image of the military vis-à-vis the elected government being considered as incompetent and the military as the ultimate saviour of the nation. Both the disposition and opportunity for military intervention are due to the weakness of the politicians and lack of ownership for civilian institutions by the people. Finer describes it as the lack of political culture and argues that higher the level of political culture, fewer will be the opportunities for military intervention in political affairs. However, if the military still attempts for an intervention, it will receive the least support from the people and other state institutions. On the other hand, a lower political culture provides more opportunities for military intervention and the likelihood of public support will be high.¹ Interestingly, as much the military will stay for a longer period in power after intervention, it will decrease the level of political support and turn public opinion against the military.

The third school of thought known as ‘interventionist scholars’ focuses on the internal dynamics of military hierarchy, corporate self-interests, individual self-interest and personal ambitions of the military commanders. Scholars such as Nordlinger and Perlmutter have analysed the influences of the military over other state institutions. Nordlinger argues that military corporatism is based on the protection and enhancement of the military’s interests by providing adequate budgetary support, allowing them autonomy in managing their internal affairs, and preservation of their political responsibilities vis-à-vis the encroachments from other state institutions coupled with the continuity of the military institution itself. Nordlinger opines that the number one explanation as reason for militaries to intervene is, by and large, the military corporatism. He analyses the reasons of military intervention as the performance failures of the civilian governments and the resulting crises of legitimacy. In effect, Nordlinger argues that the military can more easily rationalise and justify its intervention when acting against a civilian

government which they consider as incompetent or corrupt. More important, performance failure of the civilians also leads to the deflation of civilian government's legitimacy within the politically conscious sections of the civilian population. This factor encourages and allows the military commanders to act upon their interventionist motives.¹ Perlmutter concurs with Nordlinger in his argument, adding that the decision of military intervention is purely a political decision involving political willingness and the political nature of the leadership of the military intervention.¹

2.1.1 Kinds of Military Intervention in Politics

Finer has explained the difference between the military rule as an organisation and rule by a military man as a ruler. After analysing all the existing military regimes of the time, he described a military regime as a 'direct military regime' when the supreme executive power is assumed by a military man even if it is a quasi-civilianised rule.¹ The military coup can be divided into two types of intervention; the corporate coup and the factional coup. In the corporate coup, the military performs as a unified force and a corporate body which is commanded by the top leadership. However, in the factional coup, a group of military personnel attempts for a military intervention and is mostly targeted against their corporate leaders, i.e. the top leadership of military commanders. Sometimes, the factional coup may also be against a civilian government. The factional coup is normally carried out by the middle ranking officers. The probability of success in the corporate coup is greater due to the increased capacity of coup by involvement of senior military commanders. However, in case of factional coup, this capacity is very low. Nordlinger holds that the success of corporate coup is certain. On the other hand, out of 80 percent functional coups, less than 50 percent could succeed.¹ Even after the success, the factional coups are more vulnerable because they should face resistance from other powerful factions or commanders of the military. In fact, the factional coups represent the internal weaknesses of the military as a highly professional and corporate organization.¹ Janowitz argues that supremacy of the military over other civilian institutions to intervene in its affairs is due to its 'distinctive organisational format.'¹

Perlmutter divided military into three types, i.e. the professional, praetorian and revolutionary military. The first one i.e., the professional is the ‘Arbitrator Military’ having no political organisation. It intervenes in the political affairs but exhibit the desire to go back to the barracks after the problem is resolved. They accept the existing order and do not want to extend their military rule. The second type i.e., the praetorian is ‘Ruler Military’ which does not accept the existing order due to lack of confidence in the elected government. This type of military has a political organisation and exhibits the desire to stay in power for longer period.¹ The third type i.e., revolutionary is in fact the ‘Party-Military’ which could evolve from both arbitrator and ruler type military. The military creates or takes over a political party to extend its military rule. It may be a revolutionary council consisted of senior military commanders. In terms of structure, this type of military differs from the previous two types. The ruler type military may evolve in a party type by politically neutralising itself and returning to barracks. Only the head of the state would be a military man with an official political party on his back.¹

Nordlinger describes three types of military interventions in political affairs, i.e., Moderator, Guardian and Ruler. The Moderator is a form of intervention when the military stays behind the scene and gains limited goals from the civilian government. The Guardian is a form of intervention where the military directly takes over the political power but for limited goals. The extreme situation occurs in the Ruler intervention when the military takes over the power directly to achieve its ambitious goals that are spread over an indefinite duration. The ‘Ruler’ type of Perlmutter and Nordlinger closely resemble with each other.¹

2.1.2 Reasons of Military Withdrawal from Politics

Once the military takes control of power, they want not to stay longer in power. This is known as withdrawal or disengagement of the military from politics. The researchers who have studied intervention of the military in civilian affairs have also considered process of military withdrawals from power. The questions are: what stops the military from staying longer in power? Why the military should transfer power to the elected government? What considerations and factors shape military’s decision to change the nature of their direct rule? No military regime can stay in

power for ever. A civilian rule is the ultimate answer to military adventurism. This is also a popular demand of the people who always struggle for bringing elected rule and sacrifice for casting oppressive rules.¹ The military dictators create different strategies to continue their military rule but should restore the civilian government ultimately. The aggressive movements are launched to get rid of dictatorship and totalitarianism provides testimony to this human instinct.

Finer argues that due to the weak political culture, the legitimacy of martial law is of negligible importance. However, the increasing political awareness in the society points out a legitimacy factor having both negative and positive effects.¹ Finer further argues that the military, as an institution may suffer from organisational divisions and political differences due to their longer stay in power. Differences may arise among the armed forces, i.e., army, navy and air force or even amongst different components of one of an armed force or the different garrisons for that matter.¹ Thus, Finer concludes that military withdrawal from power occurs because of the following three conditions:

- The disintegration of the original conspiratorial group within the military;
- The growing divergence of interests particularly the different mind-sets in hierarchy of military commanders who hold key positions in the military establishment;
- The political challenges of the military regime.¹

According to Nordlinger, immediately after the military takeover or after a prolonged military rule, their moral rejection by the nation may lead to public protests, agitation and even the armed resistance. This opposition would be in proportion to the legitimacy which the elected government has been enjoying at the time of military intervention. This may be one of the factors to discourage military intervention but if the legitimacy of the elected government is low, the military would easily intervene.¹ With the passage of time, the legitimacy crisis may challenge the continuation of military regime. As a result, the military must withdraw from power and hand over to the elected government. The author holds that the military rule, maintained for a longer period, may adversely affect the institution of the military. Therefore, there would be a fear of counter coups within the military by the middle

and junior rank officers. In fact, during the period from 1940s to 1970s, most of the attempted factional coups were not to overthrow the elected governments but to replace one military regime with another. Therefore, the military may be more alarmed holding this concern that counter and repeated factional coups may result in the repetition of their previous failures thus leaving negative impact on the state and the military as an institution. Nordlinger supports the notion with following main factors behind withdrawal of the military from power:

- When the desire of the military to hold political authority and its related privileges are less strongly felt by military than by elected government;
- When the military feels that the elected governments would continue policies initiated by the military regime;
- When they want to return to their professional role as true soldiers for preserving of the reputation of the military;

Nordlinger holds the view that the most common method, through which military withdraws from power is its voluntary disengagement. This form of disengagement may be due to intra-military strife along with pressure from political circles. There may be an internal pressure of the refusal of military officers to provide further support to military rule. However, external pressure means when the political activists try to force out the military regime through, agitations and public demonstrations to denounce its power. In fact, the military, if supported by a united officer corps, can never be forced to relinquish its rule, no matter how longer they might have stayed in power.¹

Welch found that the following factors account for varying paths of military disengagement:

- The factors may be specific to a country; it includes leadership and distinctive issue of its history;
- The factors may be specific to several countries or a single geographic region; it includes ethnic diversity and patterns of relations between the elected governments and the military in the past, and

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- The factors may be found across the globe; it includes economic development and levels of social mobilisation.

The author gives the following six reasons as explanation for disengagement of the military from politics:

- When the military elite starts questioning the retention of political power by military regime for longer period;
- Due to the funding and internal management of the military as an institution i.e., the military will relinquish from power when it feels that their interests will be safeguarded by the elected governments;
- When their role is required in protecting the nation against a possible foreign attack;
- When it decides to avoid or reduce an internal conflict which includes strikes, protests, armed resistance and ethnic conflicts;
- When there is a decrease in the economic development; or
- When political situation arises where an elected civilian figure is believed acceptable to the military commanders.¹

Further to this, Welch declares some areas of disagreement or uncertainty in the training and attitudes of the military, economic impacts, internal disorder and progressive vs revolutionary change. He states that the respective roles of politicians and military commanders in military withdrawal from politics, factors of liberalisation, and democratisation remains disputed. Theoretically, he acknowledged the importance which economic factors play along with the relative benefits of progressive change versus revolutionary transformation arguing that result of the latter is mixed and inconclusive. He emphasises that the revolutionary transformation creates radical changes which are unacceptable to the conservative groups. Finally, he examines the gaps in the literature of military withdrawal from politics, highlighting that there is an absence of sufficient research by scholars from the Third World. The gaps are particularly about the knowledge of intra-military attitudes, level of political culture in the societies and a requirement for some studies about countries in concurrence with hypothesis. Briefly, he has given an overview of causal phenomena which leads to military disengagement. However, he fails in providing empirical

examples as per grounded theory. Therefore, he left it vague for future scholars to take it up for a policy related research across a variety of political, economic and social set ups in different countries.¹

According to Brooker, a politicised military may, instead of a strong and disciplined fighting force, act more like a political party. The performance failure, like economic or political by the elected government, increases the opportunity of military intervention in politics.¹ However, the same performance failure of military regime could compel them to transfer the power back to a newly created elected government. The initial promise by the military regime to withdraw from power after they achieve its goals is kept, and their withdrawal from power is executed. The international public opinion in favour of restoring a civilian rule especially where military intervenes by dismissing a civilian government makes it difficult for the military regime to stay for a longer period.¹ Moreover, the effects democratisation at international and regional levels influence the self-confidence of the military, on the one hand, and instigates the domestic political actors to force the military regime to withdraw from power, on the other.

2.1.3 Processes of Military Withdrawal from Politics

The next related issue is how the transfer from military to civilian rule is executed? Therefore, the next question that comes in mind is that, if the military wants to withdraw from power voluntarily, what are the dynamics of the transfer of power? What methods and procedures do the military regimes would use for transfer of power to the civilians? Thirdly, how far the elected governments, brought in power by the military regime, prove genuinely to be independent and democratic? What are the prospects of sustainability of these civilian governments? What do the military commanders do to influence the civil government for protection and promotion of their interests? Generally, the military's withdrawal from power is taken as a sign of restoring civilian set up. Both, Finer and Huntington have supported the military's transfer of power to an official political party which is normally patronised by the military itself.¹

The transfer of power to the elected government is a complex phenomenon and generalization could not be made by the theorists. The military's relinquishing power between 1940s and 1980s shows that less than forty percent of the military withdrawals occurred voluntarily through handing over power to elected governments. Welch accepts that there has been lack of a widely accepted paradigm for analysing the military withdrawal from politics and transfer of power to the civilians.¹ There are so many variations in the process of transfer of power from the military to civilians that most of the researchers have studied them separately. Still, the scholars have provided some generalities in the shape of three major categories thus explaining how the military withdrawal from power is conducted which mainly depends upon the nature and strength of military regime.

The transfer of power would be 'Abdicated type' where the military is in weaker position vis-à-vis its civilian opposition. In such cases, the military simply withdraws from power and hands over the rule to a civilian setup. However, this happens rarely as was after the surrender of Pakistan Army in 1971 and losing the Eastern part of the country. Otherwise, military is always stronger in relation to the non-military institutions. The transfer of power would be a 'Dictated type' where the military, as compared to its civilian opposition, is politically stronger. This transfer of power is more complex because it is difficult for a powerful military to transfer power to the civilians. If they become willing to share power with the civilians, they obtain legitimisation of their military rule by an elected set up. Moreover, they retain a powerful role for themselves while transferring power after holding general elections in the country. This process brings in either a full restoration of elected set up, or intensive power sharing arrangement with the submissive political platforms which leads to a quasi-civilian rule.¹

To Brooker, the transfer of power is a 'Pact type' where the military sees itself at par with the democratic forces. The military concludes a pact with the civilian government which covers the transfer of power to the elected politicians based on an "agreed upon power sharing arrangement." The military first negotiates on legitimacy which helps to prove itself as a liberal force while giving a limited space to democratic system. The process supports the resurrection of democratic forces and the popular support ultimately ends in the restoration of democratic system.¹ Although,

while negotiating the agreement, the military regime and the elected politicians are at par with each other but after the shift in power balance to the civilians, the ultimate favour goes to democracy. The gradual liberalisation leads to the strengthening of political forces with the consequent termination of military rule. In both the dictated and pact types, the military obtains indemnity from all the unconstitutional and extra-legal initiatives carried out during the direct rule of military regime. The military regime also puts condition that the new elected government would not stress on the complete independence of the civilian government and would abstain from using any violent means against the military.¹

O'Donnell and Schmitter explain the role of a compromise agreement which is concluded for the transfer of power to the civilians, thus calling it an extrication pact. Such type of agreements is concluded when the military regime and its civilian opposition are at par. The authors have explained the concept of compromise presented by Rustow and defined it as an explicit compromise agreement which holds two distinctive features. One, it redefines the rules of the political functioning and another, to protect the interests of both parties, it ensures adequate mutual guarantees.¹ The author has also categorised the process of transfer of power from military to civilians into the following three phases:

- Firstly, there is a long struggle between the polarized but equal political forces;
- Secondly, a compromise agreement is concluded between these forces which emerges in the institutionalization of democratic process;
- Thirdly, there is launched a democratic process which gradually enhances the degree and the range of consensus.

However, according to Rustow, during the post withdrawal period, the military normally chooses for an orderly party politics rather than street politics which is usually banned during the period of their direct rule.¹ In view of the military establishment, the street politics may redeem in re-politicisation of society which may lead to a stronger reaction of the officers in the military command with the fear of another military revolt.¹ If the agreement is taken as implicit not the explicit, it is not very rare. An analysis of the transfer of power from military rule in different countries

reveals that the agreement between the two involves tactical agreements or implicit negotiations.¹

To Brooker the first category ‘the abdicated’ is relatively a simpler and straightforward method of transferring power by military to the civilians. The reason could be a disrepute due to the performance failure or defeat in war etc., that the military finds itself compelled to transfer power. In such situations, the transfer of power by the military is either to be compelled by the violent political opposition to withdraw from power or voluntarily chooses to relinquish power. The abdicated type transfer of power is distinct from pact type as in the former, the military regime agrees to the complete independence of civilian government immediately as a perceived price to avoid further embarrassment. However, abdicated type might be a complex process due to the apprehensions of military about their corporate self-interests and handling of the elected government with the military personnel who conducted excesses during the military regime.¹

In all the three types of transfer of power, the military remains apprehensive about its future and before transferring power, the military ensures following guarantees:

- To Sundhaussen, the military commanders ensure that the successor elected government would not ignore the corporate interests of military and policies initiated by the military regime. Moreover, the civilian government would not interfere in internal matters of the military;¹
- To Koonings, the military obtains indemnity for various actions taken during its rule. More commonly, the military obtains assurance of civilian government’s support or constitutional guarantees;¹
- To Welch, the successor civilian government is considered competent enough by the military to ensure stability to its elected government and a peaceful political party system.¹

Therefore, according to Prinkley, it becomes clear that the military would only transfer the power once it becomes satisfied about all their apprehensions being addressed by the newly elected government. After the power is transferred, the

successor civilian government also faces legitimacy crisis. It likes to assert freedom but at the same time cannot go beyond the parameter chalked out by the military commanders. The civilian government can secure strong position against the military if it exhibits the ability to produce consensus among different political forces and the civilian institutions.¹ However, the fragmented and challenged civilian institutions further complicate the transferring of power and debilitate the strength of elected government in the post military democratic era.

2.2 Judiciary and the Military Regimes

Tate contends that when the military rulers assume power, the judiciary is modified structurally as compared to the legislatures, political parties, mass media, and the incumbent executives. However, he holds that judges are not as numerous as are the civil bureaucrats. In principle, the judges can be replaced, their services can be terminated, and/or their responsibilities can also be assigned to their counterparts. Usually, judges are not legally subordinate to executive and, therefore, cannot easily be a tool for exercising executive authority by the military regime. Thus, the relations between military regime and judiciary would appear to be subject to potential variation than between military regime and civil bureaucracy. The question will remain why should this be the case? If they cannot be structurally altered, how would the military regime affect the institution of judiciary?

For Tate, the typology suggests that in principle and, in practice also, the courts might be compared with respect to the following points:

- Independence: the extent of freedom to which the judges interpret law in contrary to the wishes of the military regimes who are having or are believed to have a political power;
- Impartiality: the extent of neutrality to which the judges decide cases in accordance with the law of the state and do not make decisions in a way the military regime wants them to decide;
- Scope of decision making: the extent of subject matters to which the judiciary can deliver decisions purely based on legal principles;

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- Depth of decision making: the extent to which the judiciary can question the legality of rules and perhaps invalidate the military decision in specific cases.

Tate contends that the role of judiciary as a citizen rights protector can be especially prominent in the interrelations with the military regimes. This is because usually the military regimes become apprehensive with the apparent unconstitutionality of their actions. The structural and functional legal frameworks are interdependent methods of considering the judicial institutions. Like, the judiciary can hardly play the role of citizens' rights protector unless it enjoys structural independence from other state institutions. Similarly, the impartiality of judges is significant for their performance in conflict resolution. In addition, the scope and depth of an independent decision making of the judiciary clearly affects the its handling of the business of its administration and social control functions.¹

Waltman suggests a set of multifaceted responsibilities that all the nations expect from the judiciary to perform, such as:

- Conflict resolution between various institutions;
- Serves as a part of administrative system;
- Protection of the rule of law significantly of criminal justice; and
- Provide a symbolic legitimacy for a regime.

Nevertheless, the power of judiciary to grant legitimacy is an important concern for the military regimes. The functions which the judiciary perform or is expected to perform, i.e., dispute settlement, taking social control measures, perform routine administration, role as citizens' rights protector, will affect how the judiciary is perceived and treated by military rulers.¹

Tate argues that initially, the military regimes portray taking over the civilian government as necessity, but a temporary action. Military caretaker regimes are formally unconstitutional but they defend their taking over of government as constitutional in a higher sense. They declare themselves as interveners in political affairs to protect the nation from a disastrous situation that would destroy the country and the constitution of the state. The military rules the state in cooperation with

elected politicians by assigning to itself the final authority. The military rulers do not abolish or even visibly alter the system of judiciary as they often deal with other state institutions. This is mainly because the military regime needs to portray their respect for the constitution. Attacking the judiciary through any direct means would prove a lack of respect for the constitution on the part of the military regime. However, the military regime can't leave the judiciary free to challenge their political power. As a result, the military regimes find ways to emasculate the power of the judiciary without directly attacking the institution of judiciary.¹

The institution of judiciary is not numerous in nature as compared to other state institutions. However, it would still be difficult for the military rulers to obtain support of even minimally skilled loyal supporters for replacing the hostile judges, particularly in higher judiciary. Thus, judges may continue their services under the rule of military. This is mainly due to their need for processing of the routine problems to the satisfaction of the military regime. Even the military which captures the government in previously constitutional political systems may continue the existing institutions of judiciary which can perform in their adapted procedure in the politically non-sensitive areas, while they are radically transformed in other areas.¹

According to Tate, the military regimes may find it less difficult to control the judiciary through restrictions imposed on its independence. An independent judiciary can be effectively restricted through a simple notification to devise a reporting line for reporting to and take instructions from the designated executives. Moreover, the impartiality of judges can be scrapped; current judges can be indoctrinated so that they can deliver reliable interpretation of the rules in accordance with the desire of the military regime. If any of the existing judges is recalcitrant, those judges could be replaced summarily with pro-military or a loyalist, subject to the non-prohibition by the skill requirements. Such actions can, however, put a question mark of doubts on their self-proclaimed role of safeguarding the constitution by the military regime. An apparent respect for the constitution by the military regime may affect if the judiciary is brought under control through restrictions over independence or impartiality of judges.

In some cases, the military regime follows to bring the judiciary under control to restrict the scope and depth of its decision making. It can be done by proclaiming that its decrees are non-challengeable and essential to establish and maintain their military regime. The judiciary is given the impression of powerlessness that it cannot question the validity of some special orders of military regime. The objective of such restriction on judiciary could be to allow it for only routine and non-threatening decision making thus preserving their utility. At the same time, it would also be preserving the important and threatening litigation for decision by more institutions under control, e.g., military courts. The scope of decision making of the judiciary can also be restricted by setting up parallel judicial institutions like military courts to deal with cases which the military regimes do not allow to be decided by the regular institution of judiciary. Another plausible justification for setting up parallel judicial system is the need of sharing the extra burden of litigation arising due to the violations of the special military regulations that cannot be rapidly dealt with by the regular judiciary. Mostly, the military officials are available for fulfilling these alternative and more controllable parallel judicial systems.

Nothing would happen if the judiciary initially refuses to accept restrictions on the scope and/or depth of decision-making. No significant change would emerge. The judges may agree for hearing the cases challenging the authority of parallel military courts or the validity of important orders and regulations being considered unjustified but later may declare the challenges to be justified. In such cases, the judges will be restricting their own scope and depth of decision making, probably more effectively than the military regime could do. If the judiciary finds some challenges on merit, then the military regimes have three basic options. The military can:

- Use coercion to make the judges comply with the demands;
- Simply ignore the orders of the judges; or
- Initiate constitutional changes in the structure of the judiciary to curtail its authority, independence, scope of work or reduce its depth of decision making.¹

No doubt, the judiciary is unable to create resistance to the coercion of a determined military regime. Das-Gupta has opined that the military rulers

dramatically reveal the limited combinations of strategic power groups which dominate the power setup and can willingly overcome other democratic forces that are outside of the formal centre of political authority mainly due to its control over the coercive resources.¹ Upon ignoring the orders of judiciary by military regime, there is little probability that the judiciary will be able to react. In fact, the judicial decisions are not self-enforceable and fully depend upon the willingness of executive for its enforcement. However, a military regime which exerts coercion on the judiciary or ignores its decisions, clearly shows a lack of respect for the constitution. Moreover, amendments to the constitution for curtailing the independence, scope, or depth in decision making of an independent judiciary which the military regime may portray as endangering the national security by its anti-regime actions clearly illustrates a disrespect for the constitution. The military regimes' control of the mechanism to bring constitutional changes may well be sufficient to make such a change feasible.¹

2.2.1 Powers and Functions of Judiciary in Military Regimes

There is a presumption among the political scientists that the judiciary during military rule serves as a pawn of the military dictators, and therefore, the judges lack independence and autonomy in political life. In democracies, the scope and impact of judicial authority are getting expanded, and the courts are delivering judgments that had previously been reserved for majoritarian institutions. Though, the focus in the study of judicial independence in on democratic systems, however, the judicial institutions are not irrelevant in the political life of the dictatorial systems.

Moustafa holds that the courts are often used for advancing the interests of military rulers, and they are often transformed into important units of political resistance. The judiciary often becomes the focal point of state-society contention, and therefore leads to the “judicialization of authoritarian politics.”¹ In today's world, it is important to study the reality of the issue of judicial politics in non-democratic regimes. Ginsburg holds that to take the courts during military rule seriously is because they are providing useful lens through which a variety of political dynamics can be examined in a political environment which is otherwise characterized to be lacking transparency and accountability.¹

The courts require specific institutional strength and social support base for fulfilling the mission of judicial independence. In an extreme level of military dictatorship, the political scientists may understand that the judiciary possess limited ability for safeguarding individual rights. Accordingly, the rules of the political game in a democratic system face extraordinary circumstances. It is a fact that the courts during military rule provide a useful test-case for hypotheses on the expansion and contraction of judicial power. Five primary functions of judiciary during military rule have been identified below:

a) Establish Control over Political Opponents

The prominent role for the judiciary to play during military rule is to exercise social control. The core function of ensuring implementation of criminal law is the central mechanism for this task. However, there are numerous parallel instruments like the ordinary or secret police, paramilitary forces and other components of the security apparatus which can be used for accomplishing these goals. The only aspect on which the military rules may differ is that which of these institutions and/or department shall be relied upon for maintaining law and order and side-lining the political opponents. Therefore, an important variable is the scope of judicial involvement. Toharia holds that the common technique to establish special military courts shows that the military rulers exercise control over the regular judiciary by channelling various types of cases.¹ While using the judiciary for social control, the judiciary as an institution vary a good deal to an extent that they can't enjoy real autonomy. The political scientists may categorise the different levels of autonomy which judiciary is granted in the implementation of policies of military rulers.

b) Legitimizations of Military Regimes

Legitimacy of the military regimes is significant mainly for maintaining power. If there is less possibility of the legitimation of its rule through the ballot box, the military regime often seeks to justify continuity of its rule through obtaining its substantive outcomes in post-conflict environments. However, to some extent, the military regime may seek to make

up for their questionable legitimacy by providing a degree of independence to judiciary. In majority cases, the military rulers focus on the issue of rule of law as a legitimising force, a common narrative which the military regimes adopt after they get failed in implementation of their initial program or after the popular support base of their rule has decreased. For obtaining legitimacy, the judiciary must have a degree of independence and autonomy from the political executives. When find an opportunity, the courts must issue judgements against the so-called narrative of change of the military regime. However, as much as a military ruler relies on the concept of rule of law, the more will be the opportunities for the opponents and the justices for exposing the drawbacks of the military rule. This situation ultimately leads to development of a core tension between the empowerment of the courts and control of the institution of judiciary.

c) Controlling Bureaucracies

Ginsburg holds that the military regime faces the problem to control the civil bureaucrats, which have a superior knowledge about the affairs of the state but have little incentive for sharing it. The military establishment may not have the skills to insulate the civil bureaucrats from direct political pressure from above, however, concrete information on the wrongdoings of bureaucrats is even more difficult for the military rulers to be collected. It is because the traditional mechanism for checks and balance, like a free press or civil society which monitors the behaviour of military regime, are also suppressed to some extent. The courts can play an effective role in providing a useful mechanism through which the military regime gains information on the behaviour of the civil bureaucrats.¹ The control of bureaucracy strengthens judicial process for mitigating the fragmentation within the ruling apparatus. The problems associated with civil bureaucrats are likely to become more severe with the passage of time and systematically with the degree of bureaucratic complexity within the country.

d) Delegation of Authority for Implementing Unpopular Policies

The military regimes have an advantage to channel the controversial policies and political questions into the courts for debate and discussion. In a democracy, Tate describe such process as “delegation by majoritarian institutions.”¹ Democratic governments often delegate their authority of decision-making to the judiciary especially when other state institutions did not reach to a consensus and a deadlock is developed. It also does so simply for avoiding divisive and politically costly issues and lets it to the judiciary for decision. Graber holds that the main objective of legislative deference to the courts is to deliver judgements on controversial policies which political executive approves however, it cannot publicly claim for it. It helps the political executive not to be held accountable by the public for implementation of such policies.¹ Doing so, some of the decisions of higher judiciary have not provided strength to the judiciary vis-à-vis other state institution.

Ginsburg holds that the judicial review is used as a strategy of political insurance by political parties especially when they foresee themselves out of the power corridors in the next elections. In such cases, the ruling political party takes it as an incentive to extend more powers to the courts, as they know that their opponents will be running the affairs of the state without them in coalition or else. The military regimes which intends to stay in power for longer period are more likely to empower the courts, mainly for extending the life of their military rule.¹ This is the reason the military rulers may want reliance over the judicial forms of governance. However, all military rulers do not wish to utilise the courts for performing such functions. Then a question arises that what circumstances compel the military rulers for resolving such dilemmas with the help of the courts?

The most significant aspect of the issue is the time factor of a military rule. If the military ruler want to stay for a longer period, the regime is more likely to take help of the courts for core governance functions of the state. Therefore, the longer a military rule stays in power, the more it is likely to turn away its focus from achieving the rule-of-law rhetoric. Then the legitimacy factor of the military regimes, which is derived from a respect for the courts is not given priority until and unless the judiciary is considered to be

independent and autonomous from the political executive and they deliver judgements against the interests of the regime from time to time.¹ Olson holds that the military rulers having more control over the country enjoys an opportunity of experimenting with a variety forms of institutional development. In otherwise case, the military rulers having lose control over the polity have nothing to do with the institutional development and are often opting for engagement in the predatory behaviour.¹

The decision to extend judicial independence and autonomy to judiciary depends on specific situations and challenges which are faced by military rulers. The limited autonomy to the courts also makes sense, but the strategy is hardly free of the risks. Once allowed for independence, the courts often open new techniques for the political opponents and activists to challenge the policies of the military rule. No doubt, this is an inevitable outcome, because each of the military regime's supporting functions by the courts is dependent upon some degree of real autonomy for the courts. However, the strategy to delegate the authority by military institution may not be diverted with the blame to abrogate of popular legislation unless the judiciary strikes down the popular policies and is clearly seen to be autonomous and independent from the influence of the military ruler.¹

2.2.2 How Military Regimes Contain the Judiciary

A major challenge for the military regime is to obtain a supportive role of the judiciary which it the courts perform and minimize their utility for the opponents of the military regime. The superior courts during the reign of military face major limitations, however, the most challenging constraints are often seriously dangerous than a controlled system of judicial appointment. However, directly attacking the superior court judges is rare in military regimes. This is because, in typical military takeovers, the military rulers can contain the power of judicial review and judicial activism without affecting the judicial autonomy and independence.

a) Judicial Self-Restraint

There is an assumption that the superior courts in the military rule serve as handmaiden of the military regime and obscures the strategic choices which the superior court's judges may make in relation to military regimes, most likely as they often perform in a democratic system. The superior court judges are aware of their insecure position especially during military regimes. They know the weakness of judiciary as an institution as compared to the political executive, and compared to personal and political implications of the judgements that affect the core-interests of the military rule. The core-interests of each of the military regime is different from another and depends on a substantive policy orientation. However, all the military rulers want to safeguard the core legal system and the superior courts that can be a threat to their regime and to side-line their political opponents for maintaining the power. Therefore, the reformist minded judges often occupy a sensitive position in such legal and judicial system. These judges may tend to develop oppositional credibility among the networks which are supportive of the judiciary. However, at the same time, they are unable for challenging core interest of the military regime. In such situation, the reformist type of judges often exert pressure for political and constitutional reforms only.¹

Helmke holds that the main interest of the military regime is only challenged when the courts are sure that the military rule can no more regime maintain power. In such cases, the superior court judges wait for the moment that the military rulers get further weakened to an extent that defection can no longer be futile.¹ This strategic defection is often motivated due to the desire of superior court judges to part their ways from the ousting military ruler and may put them in good terms with the incoming government. The judicial activism in a powerful military rule has to resort to applying complete pressure for reforming the policies and show resistance to the core interests of the military rulers. No doubt, the judicial independence may exist within a military regime, however, the military regime may also find it politically beneficial for maintaining a formal system of independence and autonomy for superior courts.

The military rulers are often capable of gaining some degree of compliance from superior courts and can have some sort of legal legitimacy without implying any direct assault on the autonomy of the judiciary. The power of executive to appoint and elevate judges to senior positions clearly shows the threat of political executive and its consequences in case court gives unfavourable rulings on the sensitive political issues. This power of the executive is sufficient for producing judicial compliance with core-interests of the martial law authorities. No doubt, the more the superior courts pay obedience to the executive power, the more will it have institutional autonomy from the military rulers. Sometimes, the internal system of judicial appointments and promotions within the judiciary may lead to constraining judicial activism regardless of any interference from the military. The professional and non-political judges did yield to the executive bullying. However, the political executive becomes more powerful over the superior court judges who often did not follow the judicial principles and lack any respect for the concept of the rule of law.¹

b) Parallel versus Unified Judicial Systems

Creating a parallel judicial system is another technique of the military regimes to contain the judicial activism and unity of superior courts. The regular judicial system exercises jurisdiction over all legal and criminal disputes in the country. By creating a parallel system of courts, some exceptional military courts are established working side by side with the regular courts. By establishing such auxiliary military courts, the political executive wants to retain maximum control through non-tenured appointment of judges, which are purely based on political basis and may avoid the due process. The sensitive political cases are often sent to these military courts if found necessary, which enables the regime to side-line their political opponents and any political threats if required. In the presence of these military courts system, the military regime happily extends a substantial degree of autonomy and independence to the regular judicial system.¹

Toharia holds that by creating parallel courts, the fragmented judicial system act to minimise the influence and sphere of action of the regular courts. Creation of this parallel court system ultimately enables the military rulers to counter the superior courts and contain the judicial activism. There is a direct relation between the degree of judicial independence and judicial fragmentations in the special context of military regimes. The more a court enjoys autonomy and independence, the greater is the likelihood of a degree of judicial fragmentation in the regular court system. The more the regular judiciary shows compliance, the greater the military regime allows sensitive political cases to be heard by the regular courts. As much as the regular judicial system attempts in challenging the interest of military regime, the greater will be the jurisdiction of the military courts.¹

During the military regime, the superior courts are often unwilling to deliver judgements about the constitutionality of parallel military courts mainly due the fear of losing the existing powers in a hopeless struggle with the military ruler. It illustrates that if the superior courts will be attempting for challenging the core legal mechanism of military regime to maintain a control of the government, they already know their defeat in this struggle.

c) Limitation on Access to Justice

The military regime is always able to contain judicial activism by resorting to different techniques which can put limitation on the efforts of reformist judges of superior courts. Basically, civil law systems of the judiciary provide judges having less manoeuvrability and lower capability of creating a judge made law than the ability which their fellow judges of the common law system enjoys. The rapidly emerging and spreading of the civil law system was historically not only derived from the colonial system, in which the colonial masters wanted to reproduce the legal and judicial system of their native state. In majority situation, the civil law system had been intentionally adopted with a purpose of imposition of colonial system as was providing a relatively better judicial system through which military regimes could control the establishment of a judge made law. Shapiro holds that the

civil law system and the common law systems vary and may be exaggerated and are becoming less meaningful with the passage of time because more countries with civil law system are adopting procedures for the judicial review.¹ The most significant constraint which a legal system faces can be the precedents that the justices in civil law systems should be applying the law mechanically, thus it may result in an inclination toward a thin rather than a thick concept of the rule of law.

The military rulers may create limitations over the structure and power of the courts enjoying as an institution for judicial review, the type of power of judicial review which is granted, and the legal standing which is the requirement. No doubt, the military ruler can create constraints on the superior court judges more effectively through the imposition of a centralized judicial structure with the judicial review powers as compared to a decentralized judicial structure. The centralized system of judicial review compels few superior court judges who might be ready for bargaining, cooperation, or to be controlled. In majority case, the military rulers may create limitations on the various kinds of legal and judicial challenges which can be developed against the country.

d) Incapacitating Judicial Support Networks

No doubt, the military rulers enjoys vast powers and may contain judicial activism through the incapacitation of the judicial support networks. Epp holds the view that the important variable which determines the timing, strength and impact of revolutionaries advocating for rights are neither the ideology of superior court justices, nor the specified rights provisions. However, the critical aspect is the capability of rights advocates who often built organisational capacities in such a way that it enables them for engaging in campaigns of litigation which are held deliberately, strategically and on regular basis. The advocates of rights may enjoy the benefits which may result only after repeated attempts when they can become properly organised with more coordination and availability of funds.¹

The weakness of superior courts as compared to the military ruler has not only due to the direct limitations which the later tries to impose on the judiciary. The weakness of civil society organisation and the people at large during the military regimes also stand one of the reason of this weakness. The task of establishing an effective system and a judicial support network by rights advocates is the most difficult task. It is due to lack of interest in the political activists for dealing with a collective action plan which typically lacks political organisation in a democratic system as well as the military rule which actively monitors, intimidates, and suppresses organisations which tries to challenge the regime. As the military regime actively control the legal and judicial system, rights advocates and organisations often find it very difficult to build organisational capacity against the military regimes or combine their efforts once again as another association. In view of the inter-dependent nature of the power of judicial review and capability of judicial support networks during military rule, the framework of statutes which regulate and constrain the political activities and legal movements of networks which stands for judicial support may be one of the significant factor of controversy between the judiciary and military rulers.¹

The story of superior courts during the reign of military is more likely to involve a dialectic of judicial empowerment. This is because the military regimes want to get the benefits which only the judicial autonomy can provide, and the judicial constraints, which military rulers tries to minimise and the associated costs of judicial independence. The reactions in latter stages are more likely because the judiciary builds up their judicial power, and because the rights activist networks often expand their support network within and outside of the country to become an efficient alternative against the military rule. However, in certain cases, the wheels of justice from the courts may simply have to stop the too much momentum.

2.2.3 The Power of Judicial Review and the Judicial Restraint

Spiller holds that the political environments having political fragmentation as common norm, and where the superior courts are autonomous, can exercise its

judicial independence without any fear of political repercussions. However, the same efforts of judiciary in a more unified political system may create political controversies, which will ultimately reduce the powers of the superior courts.¹ Judicial independence means the powers of the courts exercised to an extent that judges can reflect their preferences in dispensing their judgements without any resistance from the legislature or the political executive of the country. Judicial independence does not necessarily mean that the judges can reverse the governmental acts. The decision of a judge to reverse a governmental act can be seen whether the judge can challenge the orders of political executive, and whether the judge wants to challenge the order of political executive. Therefore, reversal of a governmental order not only depends on the political constraints which the courts usually face, and the possible political repercussions of the reversal order which means the legislature may reverse the decision of the court, number of judges can be increased in the court, a judge or some judges may be impeached, but the intention of judicial reversal also depends on the political alignment of the judge.

To Spiller, the political alignment also depends both on the process of nomination of judges with key role of the executive, which will map into preferences, and turnover the intentions and decision of the court and justices. The courts having shorter tenure are very will prefer an alignment with the appointing authorities, which will ultimately limit any potential of the judges to go in conflict with the other state institutions. On the other hand, the courts with a longer tenure may not be willing to get into political alignment or opposition with the political executive. No doubt, in the case of courts having limited tenures, if the policy preferences of judges are identical to those of the government, they may not face constraints from the executive. Moreover, the behaviour of these judges would not be affected by the level of political fragmentations.¹ No doubt, the judiciary throughout the world enjoys the power of judicial review to interpret and/or decide the validity of an ordinary law or a constitutional law which is passed by the parliament or an ordinance is issued by the political executive through head of state. However, the power of judicial review with special reference to its actual implementation and in the context of the rule of the military and a democracy is discussed in detail as follows:

a) Limitations of Institutional Competency

It is not illegitimate for a judiciary, especially in federal systems, to act like a legislature, however, sometimes they lack the required capacity to perform in this regard effectively. No doubt, the court cannot act until and unless a case is forwarded to it for hearing. Therefore, any remarks shared during the hearing which are not important for the decision on the case is not the force of law. Moreover, the judgments of the court in any legal case only binds the parties concerned with the case. Therefore, the judiciary cannot confront a broader level social issue and cannot solve the case in a comprehensive fashion. No doubt, with the power of judicial review the judiciary cannot make mistakes and revisions in the judgements which the legislature can do in law making function. It has long been believed that the judiciary could not order that its constitutional judgments like legislation, shall be given only prospective effect. It is a fact that the judiciary has no power in financial matters as well as the law enforcement body to implement its decisions, and that it is dependent on the parliament and political executive for enforcement of its decisions.¹ These issues are no doubt creating hurdles for the judges and are judicial restraints.

There are many critics who often criticise that the judiciary is not competent enough as an institution to make legislative decisions. However, when the judiciary tries to overcome its institutional limitations in this regard, the critics are still unhappy with it. Therefore, the critics cannot criticise the judiciary on both aspect i.e., for delivering legislative decrees blaming that it cannot legislate wisely, and then also become more critical when the judiciary gives legislative judgements with more care and effectively. We cannot distrust the legislative decisions based on its transitory shifts in the mood of the electorates, and it does not mean that an institution is unresponsive to the democratic process. It is not necessary that the power of judicial review may be used to deliver judgements which do not have political consequences and should be in accordance with political sentiments of the people.¹ However, the options lie with the judiciary which struggles alone with a social issue and the parliament which deals it expertly, but action of the parliament should be given a preference. However, the practical choice and decision to be taken is

between the judiciary doing its job as good as it can and no one can replace it at all.¹ Therefore, the judiciary must assume the responsibility of delivering legislative judgements. If the parliament is unable or does not want to act for correcting an unconstitutional status quo, the judiciary, irrespective of its institutional incapacities, should act to correct such actions.

b) Adverse Effects on Popular Responsibility

There are different critics who believe that judicial restraint is proposed on the power of judicial review for weakening the democratic processes. However, the discussion is not on the ineffectiveness of judicial judgements, but on the proposed side effects which such decisions have on the other state institutions. If the judiciary will be correcting the legal and constitutional errors of the parliament and the political executive, these responsible institutions may start reliance over the courts and may not be fulfilling their responsibilities under the constitution. However, the judiciary has three options in hand: declare it constitutional, declare it unconstitutional, or somehow avoid dealing with the question of its constitutionality. However, Thayer holds that, if not too much necessary, the judiciary should prefer upholding the law as constitutional and should leave it to be repealed by a more enlightened parliament.

Black holds that when the judiciary by upholding a statute's constitutionality, grants it a legitimacy. Therefore, if a statute is in accordance with sentiments of the people, the legitimacy granted may be appreciated. However, it is unfortunate that the judiciary's seal of granting legitimacy has the same effect if the statute is not in accordance with the wishes of the people. When the judiciary grants validity to such statutes, it worsens the political environment and a legislative repeal of such statute becomes less likely to be done by the legislature. No doubt, the legal experts know well that from theoretical aspect, the findings of judiciary on a statute implies nothing about its wisdom. Until the higher judiciary grants it validity, the arguments of the opposition that the statute is unconstitutional, or simply unnecessary, may compel the people for taking a second look at it. However, when the

constitutional court of a state declares the statute valid, the criticism of opposition is undercut.¹

Bickel holds that the judiciary should not grant validity to such unconstitutional statutes, however, it should withhold its hand and should avoid any constitutional judgement on it. When the court avoids judgement on the constitutional merits of a statute, the judiciary gives a chance to the legislature to correct their own constitutional mistakes. It is in the interest of the judiciary when it contemplates the recognition of a constitutional duty of a legislature rather than the invalidating a statute. It may arise as serious matter for the people to keep relying on the judiciary as a significant force for change in the constitutional issues. Developing this practice may make the legislature to enact statutes without adequately considering its constitutionality, thus leaving the matter to the judiciary to correct their mistakes. This practice may be very unfortunate; however, if the people and the parliament would be expecting the judiciary to do their work for them, the tradition and the practice would be more worse. It may overburden the judiciary and will be institutionally ill-equipped to deliver judgements and supervise significant social reforms.¹

c) The Court as an Undemocratic Institution

The critics with this argument are advocating judicial restraint but not in terms of the efficiency of the government nor on the effectiveness of the power judicial review vis-à-vis other state institutions. Rather, this critic questions the legitimacy of the judiciary to be the policy maker especially in a democratic system. The judiciary is expected to have a self-restraint mainly due to the its undemocratic structure as an institution. The power of judicial review enjoyed by the superior courts in a democratic government is often considered to be an undemocratic, inherently oligarchic and a deviant institution. Therefore, the superior courts in a democracy should let the legislature and the executive to review the laws or else as per their choice, unless there is a compelling situation for them to exercise judicial review. However, in a democracy, public policies and laws are framed based on

majority vote in the legislature which are carried out based on the principle of political equality and with an intention of the principle of political freedom.¹

According to this definition the higher judiciary is not a democratic state institution because it consists of personnel having a lifetime appointment and can be removed only through an intricate process of the impeachment process. They are also enjoying an absolute guaranty in case of none compensation while it is quite clear that majority of state institutions as well as government institutions are also by the similar features, undemocratic. However, this definition also suggests that the process of law making must be through a majority will, therefore, the upper chamber of the parliament in a federal system also do not qualify for policy making. Moreover, once elected, the internal rules and regulations of the parliament make the popular and the majority will and control even less likely to be ensured. The enormous power enjoyed by the committee system and its chairperson is based on the seniority rule which is often does not ensure the suggestions and recommendations of the opposition parties thus decreasing the chances of majority vote and popularity.

No doubt, the superior court judges are given appointment through a process which is normally carried out by the political executive which is elected either directly or indirectly. Moreover, superior court judges are human beings and not disembodied spirits who would be blind to the reality of the political situation around them. Even if the judges are not aware of the political reality in the country, the parliament and the political executive may null and void its judgements through constitutional amendments and thus refuse to execute their decisions.¹ Furthermore, the legitimacy factor of a state institution depends not on its representational structure, rather on its institutional authorization and acceptance by people. Rostow holds, that the judicial review power of the courts has been exercised by the judiciary from the very beginning, and therefore, now it stands as an integral part of the constitutions especially in federal structures.¹ Its historical presence shows that the people expect and accept from the judiciary to be interpreting, declaring,

adapting and applying these constitutional provisions, as a major protection against the possible abuse by the political executive and the parliament.

d) Judicial Review in a Democratic System

In a democratic structure, the higher judiciary does not function as a group of individuals to review the legislation with the same but often with more enlightened view like a legislature. In democracy, when most of the legislature members decides that the statute is desirable and necessary, the judiciary does not strike it down simply due to its thinking and assessment about it as otherwise. When the judiciary strikes down a law, it simply communicates to most of the parliament members that they may not have their own way and desire. In case, the superior courts should refrain from reviewing the laws simply because the judges may prefer the status quo to exist, then on what basis will it be striking down the laws.

A question arises that what will be the institutional characteristics of the superior courts that may enable the judges to bring the laws to their review and appraisal the based on the new and variable perspectives which are unavailable to the parliament. Then how would the judiciary say to the present majority members of the legislature that they cannot exercise their own will because their wishes are in contradiction to fundamental principles of the legislature? Bickel holds that judges must have the freedom, the training and the skills of following the techniques of the scholars in reviewing the laws passed by the government. This is very much significant for sorting out the principles of a community and may not be something which an institution could do well when they function mostly with a different set of rules.¹

Notes and References:

Chapter - III

HISTORICAL BACKGROUND (1947-1976)

This chapter consists of the historical background of the civil-military relations in Pakistan during the first three decades (1947-1976) along with a brief description of the pattern of such relations during the British period. Despite having her first Constitution in 1956 with a parliamentary form of government, Pakistan could not attain political stability. The first military intervention against democratic government in 1958, Judiciary's readiness to legitimise the coup and the first transfer of power from military to civilians along with restoration of fundamental rights have also been critically analysed. Although the Constitution of 1962 introduced presidential system, yet it could not restrain the people from resistance which emerged against the dictatorial regime of Ayub Khan and termed it a one-man rule. The second martial law, political crisis in East Pakistan, the transfer of power to elected representatives, the role of higher judiciary during this period is analysed. Moreover, the institution building during Bhutto era, reforms in military's command structure, role of political parties especially the opposition, constitutional amendments to curtail the influence of military and independence of judiciary also constitute parts of this chapter.

3.1 Institutional Imbalance in Pakistan: A British Legacy

The British governing structure in the Indian sub-continent was comprised of a Governor General, the Viceroy and the civil bureaucracy as an integral part of the colonial administration. This set up was answerable to the British parliament through the Secretary of State for British India.¹ All key positions of the civil administration were in the hands of the British officers. Contrary to Bombay and Madras, the British Punjab, mainly the current areas of Pakistan and a major military recruitment centre had been kept out of the political process and right of legislation for several decades.¹ The British government maintained a strong administration in this area which gave fruitful results in the recruitment especially during the 1st and 2nd World Wars. During these years of world wars, the collaboration between the civil and military bureaucracies got much closer, leading to emergence of militarised civil-bureaucracy.¹

However, on the other side, the nationalist movements within British India gained a rapid pace during the period between 1st and 2nd World Wars and the people of British India were allowed with the right to have a limited representation in legislature.¹ Elections in the British Punjab, although restricted,

started for the first time in 1923 and the first general elections¹ were conducted during 1936-37.¹ Besides electoral restrictions, the most tragic aspect of the future of the Punjab was the British support to the Unionist Party¹ which held on to political power of the Punjab till the last days of the British Raj. It established a tradition of King's party and not a representative political party of the Punjab people. Therefore, after the electoral reforms in British India, both the Indian National Congress and the All India Muslim League had not been successful to obtain some political achievements in the Indian Punjab.

The British colonial master had established a unique pattern for civil-military relations in which principally the military was given a subordinate role in relation to the civilians. However, in the absence of a sovereign Indian civil government, the military which exercised the powers of almost an equal partner to the Indian civil government, had been accountable to HMG in London. Moreover, as a member of the Legislative Council of India and the head of the British Indian Army, the C-in-C was exercising a powerful position in the internal affairs of the British Indian Army. Under the Government of India Act 1935, the defence and foreign affairs departments were kept under the direct control of Viceroy. The Indian Legislative Council could not exercise any control over strategic planning and expenditures of the Indian military.¹ This gave a strong position to the military commanders and allowed them to function independently and without any interference from the Indian civil government.¹

Generally, Pakistan inherited a healthy system of judiciary which had a good reputation for its integrity and competence. The main attribute to this system was reasonably a system of appointment of judges which was purely based on merit alone. However, the lower judiciary had not been separated from the district level civil bureaucracy that had continued with almost the same structure even decades after the independence in 1947. The appointment of the British military officers into the civil bureaucracy was another strategic practice. Thus, the military influence increased in the civil and political domains. The civil bureaucrats were also appointed judges in the High Courts of the provinces.¹ Therefore, the over empowerment of the civil bureaucracy and the military in the province of Indian Punjab left negative impacts on the post-independence political system of Pakistan. These two state institutions refused to take a back seat after the political power was assumed by the politicians. The over empowerment of non-political institutions was more disastrous due to the weak nature of elected institutions. Therefore, the consequent partition of the Indian sub-continent in independent states of India and Pakistan in August 1947 brought the new variables of political and constitutional development into the limelight.

After the partition, the founder of Pakistan, Muhammad Ali Jinnah asserted that the military would play a subordinate role to democratic government and would not exercise any role in the political decision making.¹ He had further clarified that the military was not to make state policy as it was the domain of the elected representatives. The job of military officers was to obey the decision of their elected leaders.¹ Since the British were colonial masters, they always needed a strong, powerful

and sophisticated military to maintain and prolong their authoritarian rule. The exalted position of the military and services chiefs need to be seen in that context.

Moreover, after the independence, besides stability of a new civilian government, Pakistan also faced security threats and the issues of undefined borders with all neighbouring countries particularly India. The security threat from India had further intensified after the war on Kashmir in 1948.¹ In relations to Pakistan, the dream of India has always been at least, to reduce it to 'a satellite state of India.'¹ To cope with this tendency, the military assumed the same position in Pakistan as it had enjoyed prior to the independence. Since the beginning, the defence allocations also continued to grow disproportionately. As a result, the military remained on the crossroad of progress and development thus securing more strength. As the politicians were busy in mutual confrontations, the civilian institutions of the government had remained subordinate to the military, and their growth was blocked.

After the partition, the signing of the defence pacts with the western bloc and the resulting United States' support to the armed forces was a major source of the growing strength of the military.¹ General Ayub Khan personally participated in the negotiations on military cooperation and defence pacts with the United States. The entry in SEATO and the Baghdad Pact (later CENTO) declared Pakistan as a US ally. These alliances had been purely meant for the military cooperation with each other. Therefore, the role of military in Pakistan further increased in the decision-making process, especially in the foreign and defence policies. The United States considered the military in Pakistan as an organised institution having forward thinking compared to other state institutions. The officer class was especially well suited to extend military cooperation in the cold war designs of United States against the Soviet Communism.

The United States released its financial and military aid to Pakistan and, in turn, Pakistan cooperated in their Cold War designs. Richard Nixon (then Vice President), during his visit to Pakistan in December 1953 found General Ayub Khan an anti-communist. He strongly recommended an aid to Pakistan thereby approved finally by President Eisenhower in January 1954.¹ Once the relations started between the two countries at governmental level, the Pakistan military developed direct contacts with the Pentagon and the United States military high command for military trainings, weapons and equipment. The United States cannot be blamed for direct support to the military in taking over the civilian government but apparently, their relationship had become more cordial with the martial law government of General Ayub Khan. It has also been a fact that the United States was more comfortable with the military high command vis-à-vis the politicians in power because the C-in-C had been directly dealing with the United States administration and the military, thus enjoying their goodwill.¹

3.2 Inefficiency of the Governments and Constituent-cum-Legislative Assembly

Ever since 1947, Pakistan had opted for a federal system with greater powers to the central government to counter regionalism.¹ Muhammad Ali Jinnah assumed the office of the Governor General and Liaquat Ali Khan became Prime Minister. The pre-partition Legislative Assembly had to

work as legislature and was assigned the responsibility to make a Constitution for Pakistan. The Governor General appointed Chaudhry Mohammad Ali as the Secretary General of Pakistan at the time of partition, which was the highest executive position in the British Indian Civil Service.¹ The civil bureaucracy was assigned the task of nation building for which he established a “planning committee.” In this process, he bypassed the prime minister and his cabinet thus establishing bureaucratic authoritarianism from the beginning.

Muhammad Ali Jinnah, with poor health condition, mainly depended on the secretary general whereas the Prime Minister Liaquat Ali Khan usually did not attend the meetings of the cabinet mainly due to weak eyesight. Moreover, Chaudhry Mohammad Ali was also assigned the responsibility of coordination among the ministries. Therefore, he had been chairing the meetings of all the secretaries, sometimes overriding the ministers. However, the Finance Minister Ghulam Muhammad (a former bureaucrat) did not feel comfortable with his powers of scrutinising the affairs in all the ministries including those of the finance.¹

Muhammad Ali Jinnah had taken two major decisions for improvement of the civil government. First, he heavily relied on civil bureaucracy for the conduction of governmental affairs and, the second, focused on the improvement of party organisation, i.e., the Pakistan Muslim League. Moreover, the centralized system under the Government of India Act 1935 (amended), had provided a powerful position to the Governor General and the civil bureaucracy as compared to the viceroy and the Indian Civil Service. In fact, the exclusive powers of Muhammad Ali Jinnah as Governor General had also been exercised by the provincial Governors and the Chief Secretaries.¹ The interesting phase started after the death of Muhammad Ali Jinnah and Liaquat Ali Khan, when the people from non-political background i.e. the serving and retired civil and military bureaucrats, took over the reign of offices. Therefore, instead of strengthening the political institutions, the politicians became dependent on the serving and retired civil and military bureaucrats.¹ This dependency provided an opportunity, especially to the civil bureaucracy, to dominate the process of political decision making since they had been trained in the tradition of colonial authoritarianism.¹

Prime Minister Liaquat Ali Khan had decreased the powers of the Governor General through an amendment to the interim constitution and confined this office merely to a ceremonial head of the state thus giving way to the true parliamentary system of government.¹ After his death, Nazim-ud-Din, a Bengali from East Pakistan had assumed the office of Prime Minister and Ghulam Mohammad became Governor General. Ghulam Mohammad revived all the previously enjoyed powers of the Governor General and became an absolute head of the country. Thus, the real political power shifted from the premier and Constituent Assembly to the Governor General and, later, to the President as the head of the state. There are many examples that the non-elected heads of the state crossed the limits of their powers, and actively participated in the political matters of the state.

Meanwhile, martial law was promulgated in the Punjab in 1954 due to the anti-Ahmedia riots, which provided another opportunity to the military to exercise more powers. The military commanders, along with powerful civil bureaucrats, started questioning the abilities of politicians, especially the Muslim League. When the financial constraints led to the decrease in defence budget, the military was annoyed. Therefore, the situation of the country was favourable for Ghulam Mohammad to take action against the premier.¹ He dismissed the government of Nazim Uddin mainly on the charges of wheat crisis and the poor handling of anti-Ahmedia riots in Lahore, declaring that the people have lost confidence over the government and that it was unable to function smoothly.¹ Obviously, the dismissal was done with the support of military and bureaucracy.¹ Nonetheless, Nazim Uddin, who was enjoying a majority in the parliament, had been struggling his best to create consensus among different political parties. However, the Governor General was of the view that a technically expert cabinet would be better than the politicians to manage the affairs of state. Nazim-ud-Din did not believe in challenging the dismissal of his government in any court and, instead, represented his case to the British Queen to recall the Governor General, but in vain.¹

Another induction of a non-elected person in political office was that of Mohammad Ali Bogra, then ambassador of Pakistan to United States, as the successor of Nazim Uddin.¹ Now, it was a non-elected Governor General (an ex-civil servant) who had also been presiding over meetings of the cabinet. The Governor General had not been in favour of any constitutional provision that could reduce his powers. Therefore, he had not only dismissed the ministry of Mohammad Ali Bogra but also dissolved the Constituent Assembly in October 1954. It was because the assembly had passed a bill to curtail his powers. The Governor General was successful to get ministers of his own choice inducted into the cabinet which he described as 'Cabinet of Talent,' and Mohammad Ali Bogra, was again asked to serve as the Prime Minister.

Earlier, General Ayub Khan had also been given a conditional offer by Ghulam Mohammad to take over the power of government and to complete the task of constitution making within three-four months, which he had declined.¹ However, he accepted to become Defence Minister in his nominated cabinet of talent on the condition of his continuation as the C-in-C of the Army.¹ Moreover, when he was asked to suggest some competent and reliable persons for the cabinet of talent, Ayub Khan had proposed the name of Major General (retd) Iskander Mirza in consultation with Mohammad Ali Bogra.¹ Ghulam Mohammad had implicit faith in Ayub Khan and had also confidence over Iskander Mirza as a Defence Secretary. The induction of a serving C-in-C in cabinet was an unprecedented act in the parliamentary history. Its repercussions appeared in two different ways; first, General Ayub Khan got the taste of exercising political power. Secondly, he had already experienced the weaknesses of the civil administration and its dependence on military bureaucracy for coping with turmoil.¹

The performance of civilian government was not up to the mark as they could not deliver the services efficiently to the expectations of the masses. In the seven years life of the first Constituent Assembly, it had held its sessions at an average of fifty-one days per year. The second Constituent

Assembly regularly functioned for finalising the Constitution of 1956. After the adoption of the Constitution, it could resume its average meetings of forty-seven days per annum.¹ The first Constituent-cum-Legislative Assembly was dissolved by Governor General Ghulam Mohammad when it was almost near to finalise constitution making in 1954. Thus, the constitution making process was further delayed thereby leaving no option for the country but to continue with an interim constitution till the making of 1956 Constitution. Law making was another responsibility of the assembly which the legislators took for-granted. Most of the laws were either not discussed properly and even if discussed, the debates had been inadequate. Moreover, the existing laws were amended instead of drafting new laws. Even then the debate used to be avoided as the legislators would not be supplied the agenda item which were to be discussed in the assembly.¹ The first Constituent Assembly worked for seven years however, only fifty-six notices of the adjournment motion had been presented. Moreover, only four of these notices could be discussed in the assembly.¹

The intolerance of the ruling party towards the opposition political parties had remained a continuous practice and the growth of the latter was deliberately discouraged. The Muslim League was considered as the mother of all political parties in Pakistan. The internalized factionalism and the disappearance of strong leadership led to the disintegration of Muslim League. In fact, nine out of thirteen political parties were created out of Muslim League.¹ Due to long delay in general elections, the politicians had not been confident of their political base in the society. Had the elections been conducted immediately after the independence, the people of Pakistan would have brought to the forefront such leadership which could adequately cope with the challenges that Pakistan was faced with. The government adopted various political and non-political methods to retain the parliamentary members and their support including that of the opposition members. The Public and Representative Offices (Disqualification) Act (PRODA) 1949 was also used as a political weapon against the ministers, political opponents, and to eliminate and discourage the intra party rebels in national and provincial assemblies.

The elevation of Iskander Mirza, first to the office of Governor General and later to the President of Pakistan following the promulgation of the 1956 Constitution, had contributed in promoting the civilian dictatorship of the period of Ghulam Mohammad. In fact, Iskander Mirza had initiated a new period of palace intrigues for strengthening his personal rule thus contributing in the political instability of Pakistan. The political developments during this period had also decreased confidence of the people on the politicians and the weak democratic process.¹ None of the civilian governments during the first decade could work independently, and within seven years i.e., from 1951 to 1958, six prime ministers¹ were either dismissed or replaced. Interestingly, the C-in-C of the Army had continued to function by seeking extension after extension.¹

3.3 Dissolution of First Constituent Assembly and Validation by the Judiciary

In June 1954, Justice Muhammad Munir was appointed by the Governor General Ghulam Mohammad as the Chief Justice of Supreme Court (then Federal Court of Pakistan). His appointment was made after the written agreement of senior Associate Justice of the Court, A. S. Akram, a Bengali, to the Governor-General waiving his seniority right in his favour. Four months after his appointment as Governor General, Ghulam Muhammad issued orders for the dissolution of constituent assembly. Maulvi Tamizuddin Khan, the speaker of that assembly, filed a petition in the Sindh High Court (then Chief Court of Sindh) which issued a writ of mandamus to the respondents, and equating the dissolution of assembly as illegal, the Court ordered its restoration. The Governor General had to file an appeal before the Federal Court.¹ It is believed that Ghulam Mohammad made it quite clear to Chief Justice Munir about the kind of decision he had been expecting from the Court. With a four-to-one count, Justice Munir issued the decision on March 21, 1955 in favour of Governor General which set aside the decision of Chief Court of Sindh. The Federal Court declared that it had no jurisdiction for issuing writs under Article 223-A, because the bill for this act, though passed by the Constituent Assembly, had not received consent of the Governor General.¹

While issuing the judgement, Justice Munir did not take the question of the Governor General's right of dissolving the Constituent Assembly, and thus swept away the sovereignty of the Assembly. Validating the dissolution order of Governor General, the higher judiciary of Pakistan became a major hurdle in the consolidation of democracy and caused an insurmountable damage to the future of parliamentary democracy in Pakistan. This decision had also given rise to other constitutional issues regarding the powers and privileges exercised by the Governor General and the nature of the laws passed by the Constituent Assembly. On his part, Ghulam Mohammad interpreted Tamizuddin Khan Case as a green signal from the Court, allowing him to exercise unchecked powers.

As a result, a case titled *Usif Patel and other VS Crown*, was filed before the Federal Court. The main issue that was challenged in the case had been the validity of Section 92-A of the Government of India Act 1935. It was argued that as declared in Maulvi Tamizuddin Khan Case, the amendment of any section of the said Act can't be granted validity if it had not been ratified by the Governor General. Therefore, the petitioner had demanded for liberty from the Court by argument that he had been detained under the same law that had not taken the final ratification by the Governor General. The Federal Court thus declaring the detention of petitioners as illegal had to set the appellants free. It was argued that the Governor General could not substitute the constituent-cum-legislative assembly. Therefore, the Governor General was asked to constitute another Constituent Assembly so that the legislations being declared as invalid could be discussed.¹

The repercussions of the Court's verdict in this case had aggravated the crisis further. This was because it had created a set of litigations which challenged several actions by the government. As far as the process of democratisation is concerned, the decision of the Chief Court of Sindh had played a positive role. It was due to the Federal Court's decision due to which the Governor General was bound not to assume the legislative powers into his office rather the Federal Court induced him to form

a fresh Constituent Assembly comprising of the elected representative of the people. No doubt, the Federal Court had taken a bold decision thus playing its constructive role for the process of democratisation. The image of judiciary, which was affected in Maulvi Tamizuddin Khan Case, was restored to some extent. Under the Federal Court orders, the Governor General had to establish a new Constituent Assembly through indirect elections.¹

In response, Governor General Ghulam Mohammad filed a reference raising various questions before the Federal Court. To bridge the legal and political gap created by the previous order, the Federal Court now relied on the Doctrine of State Necessity. Unfortunately, after this decision, Pakistan could not relinquish this doctrine which has been giving validity to the illegal acts of usurpers in the shape of military interventions. Although, it was correct that the situation was very grave, yet it raised a question in the minds of people that had this complexity in state affairs been as an outcome of the verdict of the Federal Court in Maulvi Tamizuddin Khan's case. The answer to this could be in positive that no doubt, something was wrong in the verdict of Maulvi Tamizuddin Khan Case, which had ultimately worsened the situation. However, by validating the dismissal order of the Constituent Assembly, the higher judiciary made a precedent to grant assent to such dissolutions of the elected assemblies and constitutions under the doctrine of state necessity. The second Constituent Assembly under the premiership of Chaudhry Mohammad Ali started making of the constitution from the point where it was derailed. The ultimate result was that the new constitution was prepared in less than one year.

3.4 First Martial Law of General Ayub Khan 1958

The takeover of government by the military was planned in 1957 when General Ayub Khan extensively toured the East and West Pakistan. The military realized to intervene in the civilian government but they were not ready to be declared responsible for the inability of politicians and failure of the democratic institutions. General Ayub Khan had been reported to have once said that if the people want me to come, I shall not shirk my duty.¹ One of the immediate reasons of the promulgation of martial law was the politics of confrontation among the political parties. In East Pakistan, the governments of Chief Minister Aftab-ur-Rehman (Awami League) and Abu Hussain Sarkar (Krishak Sramik Party) were dismissed and reinstated several times. The situation also led to the dismissal of Governor Fazlul Haq (Krishak Sramik Party) and later to the imposition of President's Rule which lasted for two months. The political confrontation finally led to feuds and resulted in the death of Deputy Speaker (in chair) in East Pakistan Legislative Assembly. Similarly, in the West Pakistan, Dr. Khan Sahib formed the Republican Party with the support of President Iskander Mirza, who used it as a tool. The party was saved from defeat by the casting vote of the presiding officer in the very first election for the Speaker. Afterwards, it could succeed to stay in power only by managing majority in one way or another.

Therefore, the 1956 Constitution could not survive for long and President Iskander Mirza imposed Martial Law on October 7, 1958. The civilian government of Prime Minister Malik Feroz Khan Noon was dismissed along with the dissolution of the National and Provincial Assemblies. Moreover, General Ayub Khan, the C-in-C assumed the office of Chief Martial Law Administrator (CMLA)¹ along with the office of Supreme Commander of the Armed Forces. In addition to President Iskander Mirza and General Ayub Khan, only the senior staff at GHQ knew about the plan and the other services were barely involved in the coup.¹ The C-in-C of Air Force and C-in-C of Navy were not taken into confidence prior to the imposition of martial law. They became aware only after all the arrangements had been completed for the takeover.¹ The C-in-C of Air Force, M. Asghar Khan was informed about the decision to impose a military rule in the country only after all the arrangements were done.¹ The only other person who was well informed was the Ambassador of United States as President Iskander Mirza had taken him into confidence. The United States assured the support to the newly established military regime because they were holding an optimistic view about the military as a liberal modernised armed force which they perceived as capable for bringing political stability in Pakistan.¹

Only three days after the proclamation of military rule (October 10, 1958), the CMLA promulgated the Laws (Continuance in Force) Order, 1958. The order was meant to avoid any legal vacuum and resultant crisis like those previously faced by the government when the first Constituent Assembly was dissolved in 1954. The imposition of this order avoided such crisis to be repeated. This Order validated all the existing laws which were in-force prior to the proclamation order of October 7, 1958, only excluding the Constitution of 1956 which was abrogated.¹ The New Legal Order declared that until a new constitution is promulgated, affairs of the state would be run as nearly as possible, according to the 1956 Constitution, which stands abrogated. Thus, the jurisdictions of all courts including the Supreme Court of Pakistan were kept restored. However, the fundamental rights were suspended and no writ could be issued against the CMLA or anyone exercising powers or jurisdiction under his authority. No Order or Regulation of Martial Law including the proclamation of October 07, 1958, and no finding, judgment or order of a Special or Summary Military Court would be allowed to be challenged or heard by the judiciary.

President Iskander Mirza soon realised that handing over of all the major powers in the hands of General Ayub Khan could be dangerous for his survival. He tried to rationalize this power structure along with the state framework for governing. Therefore, in addition to CMLA, General Ayub Khan was also appointed as the Prime Minister on October 24, 1958, thereby making him the first serving C-in-C in this office. When General Ayub Khan was on tour to the East Pakistan, President Iskander Mirza made some effort for mobilising support of senior army commanders in his favour against the former. However, this strategy offended the military commanders and they ignored the verbal instruction of the President of Pakistan.¹ Moreover, avoiding any future manoeuvrings, General Ayub Khan pre-empted by taking a forced resignation from President Iskander Mirza. Therefore, in addition

to the post of CMLA, General Ayub Khan also took over the office of the President on October 27, 1958 just twenty days after the imposition of military rule.¹

General Ayub Khan had asked Chief Justice Muhammad Munir in a meeting for a possible mechanism through which a new constitution could be framed for the country. The reply of Chief Justice Muhammad Munir was both original and astonishing. To him, constitutions in the Greek states, were approved by 'public acclaim' and this could be done in Pakistan as well. Therefore, he was of the view that the draft of the constitution should be published in newspapers. Then public meetings would be arranged which would be addressed by General Ayub Khan. In the meetings, Ayub Khan would hoist the document and seek approval of the public.¹ The participants had laughed at this suggestion. No wonder then, that Chief Justice Muhammad Munir was to declare a successful revolution to be a 'basic law-creating fact.'¹ Chief Justice Muhammad Munir, having actively participated in preparation of the draft of the Laws (Continuance in Force) Order 1958, later also chaired the Bench of the Supreme Court in historic Dosso Case which gave validity to the same order.¹

The nation was also fed up with the inefficient and corrupt politicians, the fragile democracy and the frequently changing of governments. Therefore, having effective results of the 1954 military intervention in Lahore, the people had not resisted.¹ General Ayub Khan also moved very quickly on various national and international fronts to consolidate his power by showing to the people that he had been trying to introduce some positive changes in a way the country has been governed previously.¹ The threat of Indian attack also increased the need to take measures for building a large military with the required capabilities. The nation was ready to offer sacrifices by allowing a major share of the limited national resources to the military.¹ Miss Fatima Jinnah had already praised the ouster of President Iskander Mirza from power at the hands of General Ayub Khan. However, later, realizing that the military had taken over with an intention to stay in power for longer period, she had been strongly criticising the dictatorial rule of Ayub Khan.

The cabinet of the martial law regime under President General Ayub Khan was comprised of both the military and the civilian leadership. The senior-most civil bureaucrat, Aziz Ahmed, had been designated as Secretary General, and was named as deputy CMLA in the first meeting of the cabinet on October 27, 1958. After that day, the C-in-Cs of the three-armed forces had also been made deputy CMLAs and three days later Aziz Ahmed was removed from his role as deputy CMLA. No doubt, some of the civilian members of the cabinet that had earlier been appointed by Iskander Mirza were concerned about their future in Ayub Khan's cabinet. However, Z. A. Bhutto seemed self-assured, having versatile skills, had proved that he had been the choice of both Iskander Mirza and Ayub Khan.¹ The civil bureaucracy quickly shifted its loyalties to the new leaders and the Martial Law Authorities were also dependent on the civil machinery. The Martial Law authorities wanted their decisions to be implemented in letter and spirit. As a result, the civil bureaucracy availed the opportunity of exerting greater authority and power under the umbrella of military rule.

3.5 Validation of Martial Law by Justice Muhammad Munir

The validity of Ayub Khan's military rule was challenged in *The State Vs Dosso and Others* Case before the Supreme Court. Originally, it was a suit, examining the scope and functioning of the Frontier Crimes Regulation (FCR) 1901.¹ But in effect, it challenged the validity and legitimacy of Martial Law which was imposed in 1958. The major question involved in this petition was whether the writ of the Lahore High Court declaring 1958 Martial Law as illegal, had fallen under the Laws (Continuance in Force) Order 1958. It did not require a ruling as broad as one, judging the legal character of the martial law regime. However, Chief Justice Munir relied upon Hans Kelson's *General Theory of Law and State*, and declared that if a revolution is successful and it satisfies the test of efficacy thus it becomes a basic law creating fact. Keeping in view this theory, the Laws (Continuance in Force) Order 1958, although, transitory or imperfect, is a New Legal Order. Therefore, the validity of the laws of the country and the correctness of decisions of the courts should be determined in accordance with this Order.¹

The crucial distinction between legality and legitimacy were ignored by Chief Justice Munir, either because he thought it unnecessary, difficult or inconvenient. Besides the legality issue, the Court did not consider an important issue of the identity of the usurpation of power of a civil government with martial rule and the resultant changes in the institutional structure of the state. Specifically, the Court ruled on the legal status of fundamental rights after the Constitution was abrogated. Equally important, it discussed relationships between legality, which it termed validity and legitimacy and explicated relationships between power and authority. However, judgment of the Court was questionable for its logic as well as its political assumptions.¹

The decision of Justice Munir in *Dosso Case* 1958 set the judiciary on an explicitly political path. As restrictions were already imposed on its powers, the Court could have refused to hear these appeals. This would have ignited a battle between judicial and executive authorities at the beginning of martial law. Another alternate was that the Court could have removed itself from the political fray by ruling that the abrogation of the Constitution of 1956 meant that the appeals themselves were no longer possible to be judged. Finally, the Court could have ruled that appeals filed prior to the abrogation of Constitution in 1958 would be judged in accordance with the 1956 Constitution. However, it had been acceptable for Justice Munir to forget the old constitutional order and accommodate the Court to the New Legal Order, thereby dispelling challenges to the new military regime. The Supreme Court validated the military rule and the Laws (Continuance in Force) Order. However, later, Justice Munir had characterized this decision as 'legalized illegality.'¹

Although, Justice A. R. Cornelius had agreed with the decision of the Court, yet he did not agree with the reasoning which many of the Bench judges had adopted. He had a differed opinion from the majority on the issue of fundamental rights. Fundamental rights to him, as given in Part-II of the 1956 Constitution, in any case did not derive their entire validity because of being described in words

and/or because they were enforced through that Constitution. The view that they had ceased to exist only because that writing and the Constitution was no longer enforceable, involved a danger that these fundamental rights be denied at a time when they were expressly assured in writing in the Constitution.¹ Constitutions come and go, but rights remain. He held that the role of the Court during emergency should be to protect the rights which it was able to protect, and a limited but highly political rendering of judicial actions, and to leave the political arena to sort itself out.¹

Like that in Moulvi Tamizuddin Khan Case, the judgement in Dosso Case produced reverting effects, thereby affecting the constitutional development and efforts of strengthening the political system. The Supreme Court showed unnecessary haste in legitimizing the military rule of General Ayub Khan. The appeals before the Court could have been heard and decided irrespective of any discussion on the validity of Laws (Continuance in Force) Order 1958. The question of validity of the said Order was unnecessarily dragged into this controversy. These cases had been pending before the Court which were filed long before the imposition of military rule in 1958. The cases were heard on October 13-14, 1958 and were decided only a few days after the imposition of military rule (i.e., on October 27, 1958). The question arises that why the Supreme Court could not delay the case until someone had directly challenged the *vires* of Laws (Continuance in Force) Order or the validity of 1958 military rule? Only to appease the new master, judges of the Supreme Court set the writ jurisdiction of the High Courts as invalid and striped the citizens of their fundamental rights.¹

Justice Muhammad Munir had applied the legal theory which was applicable to popular revolutions only, for justifying the coup d'état of General Ayub Khan. However, the military coup cannot be described as a popular revolution. In his later writings, Justice Munir also used the term 'revolution' for defending his reasoning and posed a question. Could any court having discretionary powers in the matter, issue an enforceable writ on October 8, 9 or 10 against a martial law regime, whose imposition had been brought into effect by the proclamation of the President of Pakistan?¹ However, it was not a concern of the higher judiciary to see whether the verdict of the court would be accepted by the executive or not. The responsibility of the judges was to stand firm for what was right and the enforceability of writs. The judiciary could not issue a wrong verdict only because a correct one might not be enforced by the executive. Had the judiciary given its decision setting aside these irrelevant considerations, the political and constitutional history of the country would have been different. However, had Dosso Case been decided on the principle of justice, an unending tussle would have started between the executive and judiciary.

The decision of Supreme Court in Doss's case provided a constitutional cover for General Ayub Khan to completely takeover the civilian government. Therefore, he removed President Iskander Mirza from office only one day after the decision of the Court was announced.¹ President Iskandar Mirza was removed and General Ayub Khan took complete control of the country. With the decision to give legal cover to the martial law, the country continued to run under the rules of the previous constitution which had been abrogated by military regime.¹ The Court ruled on the legality of martial

law regime thereby offering a mixed message. While indicating formal judicial interest in the structure and governing of the state, the judges demonstrated willingness of the judiciary to retreat from articulating the principles of the country in favour of upholding its own limited survival.¹ To achieve political results, Justice Munir abstained from political analysis during the hearing. Most important were these questions which were left unanswered. Should the court interpret political events so soon or, at all, for legal judgment? Where should the line be drawn between politics and constitutional law, substantively and procedurally? Shortly before the Dosso Case, Justice Munir had declared poetically that, when politics enters the portal of the Palace of Justice, democracy, its cherished inmate, walks out by the back-door.

Justice Munir's court made the politics and legality the same; he interpreted legality as legitimacy, despite knowing that the regime would use his judgement to validate itself in public eye. The limitations on judicial action stated in the first proclamation were accepted by the Court's majority. The Court's powers were further diminished due to the combination of declaration of usurpation and the revolutionary legality doctrine. Thus, the government was immune from direct challenge in the Court. Moreover, without fundamental rights, the Courts could not mount or support effective resistance to the encroachment of state on individual liberties. By applying legal positivism as a doctrine rather than an analytic tool, the Court found itself presiding over a six-year absence of justiciable rights in Pakistan.¹

3.6 Ayub Khan's Handling of Political and Constitutional Issues

The military leaders experienced during the Martial Law period that the influence of seasoned politicians should be reduced to the minimum to form a stable government in the country. Therefore, actions were taken only against specific politicians who were the rivals of military regime. The intention was for creating a space for the new politicians who might respect the power of military regime and be ready for extending an unconditional support.¹ Two ordinances were promulgated for this purpose, namely the Public Offices (Disqualification) Order (PODO) on 25 March 1959 and the Elective Bodies (Disqualification) Order (EBDO) on 7 August 1959. The laws under these ordinances were applied to all the citizens of Pakistan who held public offices. These were applied with retrospective effect from August 14, 1947 thereby attempting to side-line the political opponents from political scene. EBDO was an extension of PODO, to simplify the procedures of inquiry and to call to book those persons who were merely members of the legislative assemblies.

As a way forward to a new system of local government was promulgated on 27 October 1959 which was called as the Basic Democracies Order 1959. *Basic Democracy* in any case was not a substitute of the national and provincial assemblies. However, this system was more than a local government system, exercising more powers and functions and thus decreasing the influence of the seasoned politicians. Basic Democracies was to act as an Electoral College for the elections of the President of Pakistan, and members of the National and Provincial Assemblies. Thus, it had provided

an indirect system of democracy, and more precisely in Ayub Khan's words, the Controlled Democracy.¹ General Ayub Khan decided for holding a presidential referendum for obtaining legitimacy for his military regime and to secure confidence of the people to formulate a new constitution for the state.

Just after the elections of Basic Democrats, the Election Commission held a referendum on February 14, 1960, asking the Basic Democrats: "Do you have confidence in Mohammad Ayub Khan?"¹ The results were clearly in support because the Basic Democracies were the product of a local government system which was introduced by Ayub Khan. Therefore, for securing their own interest, more than 95 percent members of the Electoral College voted in favour of President Ayub Khan.¹ The presidential elections held in January 1965 were the first ever presidential elections in history of Pakistan. However, Ayub Khan declared this referendum as a mandate given to him by the people to serve as the President for next five years. He was sworn in as the President of Pakistan after three days, and had been called as the first elected President of Pakistan.

In 1954, General Ayub Khan, while serving as the C-in-C of Pakistan Army had documented his observations and experiences titled: "A Short Appreciation of the Problems of Pakistan" which were shared with the then Governor General Ghulam Mohammad. It was, in fact, a proposal for constitution making in Pakistan showing strong reservations of General Ayub Khan about the parliamentary system.¹ Now as a President of Pakistan, Ayub Khan shared a revised document with the cabinet members. This draft proposed a more centralized and authoritarian political system compared to the original draft.¹ Although, constitution making had to be assigned to a constituent assembly having a public mandate, yet Ayub Khan assigned this task to a Constitution Commission. The Commission mainly recommended a Presidential System with a quasi-federal structure.¹ The report was referred by President Ayub Khan to a five-member cabinet committee which, ignoring most of the proposals presented by the Commission, finalized a draft of the constitution. Thus, the 1962 Constitution was announced on March 01, 1962 by Ayub Khan and was enforced on June 08, 1962. The Constitution combined powers of head of the state and head of the government in an indirectly elected President.

Martial Law was lifted on July 08, 1962 and all powers of the CMLA were transferred to the President of Pakistan. However, in order to secure the validity of the regulations, orders, and actions taken under the military regime from challenging in the higher judiciary, the President issued two orders one day prior to the commencement of 1962 Constitution.¹ Its combined effects were not only meant for granting immunity to the officials involved in illegal and unconstitutional acts during the military rule but also to keep intact the effects of various martial law orders and regulations and other laws which were saved as existing laws.¹ The political activities were restored after the lifting of martial law in 1962. As a president backed by the military, Ayub Khan now needed to restore his position as politician. However, without the support of a political party, his measures did not ensure support for his personal rule for long.

Therefore, the Political Parties Act was passed by the unicameral legislature on 15th July 1962 and the political parties could function. President Ayub Khan supported the establishment of a new political party called Convention Muslim League and joined it as its Chairman in 1963 which, therefore, came to be known as the king's party.¹ Therefore, the already existing Muslim League changed its name to Council Muslim League. Although, the restoration of political parties made the political process participatory and bilateral, yet the system remained a one man show only. The dictatorial regime continued all its coercive measures against the media and the opposition was pressurized by arresting their leaders on different charges. The Jamat-i-Islami was also banned in 1964 but to the embarrassment of Ayub Khan regime, the judiciary restored it after nine months.¹

Under the 1962 Constitution, President Ayub Khan was not required to contest the elections for the first term of his office as he had already obtained confidence of the Electoral College through the referendum held in February 1960. However, after two consecutive terms of ten years in office, the President was not to run for the third term, unless the members of federal and provincial legislatures approve his candidature by a secret ballot in a joint sitting. Therefore, to ensure his candidature for the third term, the end date of his first term was reduced by four and a half months to March 22, 1965 through the Second Constitutional Amendment. When the presidential elections were announced to be held on January 2, 1965, all the opposition political parties joined hands to form a joint front called the Combined Opposition Parties (COP) against the military backed dictator. Miss Fatima Jinnah, sister of Quaid-e-Azam was persuaded to accept her nomination as a presidential candidate which she accepted despite old age.

Ayub Khan successfully exploited the situation by making it to the people that if opposition political parties succeeded, the political system would be reversed as they were campaigning for parliamentary system with direct elections to the assemblies. Clearly, the Basic Democrats being beneficiaries of the existing system did not vote for Miss Fatima Jinnah and elected their patron Ayub Khan. However, this very fact consolidated the impression in the masses that it was a non-representative political system. Specifically, the dictatorial rule of Ayub Khan lost political credibility especially in East Pakistan. During the elections to the national and provincial assemblies, the Convention Muslim League (king party) virtually swept the elections against the opposition political parties in West Pakistan. However, its performance was dismal in the former East Pakistan.¹

General Ayub Khan, in his treatment of the judiciary, had directly and blatantly assaulted on the independence of judiciary. It was for the first time by a military dictator who, in gross violation of the procedure under the constitution, had started a practice to interview the judges prior to their appointment in the higher judiciary. Moreover, the West Pakistan Governor, General Musa and Federal Law Minister assisted him as members of the interview panel for the appointment of judges.¹ Surprisingly, the Chief Justice of Supreme Court and the Chief Justice of the concerned High Court would not be consulted or allowed to participate in the process of interview. Even the process of conducting interview was arbitrary and subjective.¹ Moreover, active politicians were also inducted into

the higher judiciary. Manzoor Qadir, Cabinet Minister for Foreign Affairs, was inducted as the Chief Justice of the West Pakistan High Court in 1962. He was said to have drafted the 1962 Constitution, acquiesced in the elimination of fundamental rights as justiciable doctrine.¹ In addition, Afzal Cheema, Deputy Speaker of the National Assembly was also appointed as judge of the West Pakistan High Court in 1962. It was in return for his casting vote on a matter which was highly sensitive for the regime.¹ Zakiuddin Pal, a member of the Central Executive Committee of the Awami League and Hamood-ur-Rehman, an active member of Pakistan Muslim League (PML) were appointed as judges in the East Pakistan High Court.¹

However, still the higher judiciary had played an effective role to demonstrate its position as an independent institution. The actions of the next Chief Justice of Pakistan, Justice A. R. Cornelius had brought the Ayub Khan regime under a fair amount of criticism.¹ The case of Fazlul Qadir Chaudhry and other vs Muhammad Abdul Haq, was decided by the Supreme Court against the unchecked power of the President enjoyed under the 1962 Constitution. Upholding the supremacy of the Court, it declared that executive rule had been fettered by the written constitution and that the guardian of the Constitution was the higher judiciary. The original constitution of 1962 neither listed right nor rendered them justiciable. The first amendment to the Constitution was approved on December 25, 1963 by the unicameral parliament and obtained the assent of the President on January 10, 1964. By enumerating and defining fundamental rights and rendering them justiciable, this amendment put an end to one of the most vexing problems created by the Constitution of 1962. The following year, as the fundamental rights were included in the Constitution, the supremacy of the Courts over the executive became more apparent, thereby challenging the dictatorial designs of Ayub Khan and his cohorts on different occasions.¹

Under the Constitution of 1962, a member of the assembly, if appointed as a minister or to any other profitable office in the Service of Pakistan, could no longer be a member of the legislature.¹ Therefore, on the refusal of East Pakistani legislative members to accept such ministerial appointments, President Ayub Khan issued an order allowing the ministers appointed from the legislatures to retain their membership as legislators also. An appeal was filed before the High Court of East Pakistan challenging the validity of the order for dual appointment of the ministers. The Court held in a unanimous judgment that allowing the ministers to serve in the legislatures was to alter the very nature of the 1962 Constitution which had intended a presidential form of government thus separating the executive completely from the legislature. Exactly one month after the High Court judgment, the Supreme Court handed down a unanimous judgment, upholding the decision of High Court. The effect was that a major departure from the essence of the Constitution was reversed by a judicial construction rather than by legislative amendment. Thereafter, a series of judgments of the higher judiciary had clearly moved the apparatus of government to be within the ambit of what is commonly regarded as presidential rather than parliamentary system.

The Supreme Court, however, was also compelled to deal with another provision which had bared the higher judiciary to interpret the Constitution and to review legislation for its constitutionality. In its declaration, the Supreme Court under Chief Justice A. R. Cornelius in a unanimous decision, unequivocally established the principle of the inherent prerogative of the higher courts to exercise the powers of judicial review to confirm whether an act of a statutory authority or a law passed by any of the law-making authorities under the Constitution, was in accordance with the principles of the Constitution. No doubt, the decision of the Supreme Court in this case had been a landmark in constitutional development of Pakistan as much as the case of *Marbury vs Madison* was in the United States.

The Supreme Court made a significant advancement in civil liberty in 1964 in the case involving the dissolution of the Jamat-e-Islami. It was an orthodox Muslim platform headed by Maulana Abul A'la Maudoodi, which had organised itself as a political party. Ayub Khan's regime had long been at odds with the Jamat-e-Islami, thereby attempting to restrict its activities. The governor of West Pakistan, under the 1908 Criminal Law Amendment Act, banned Jamat-e-Islami thus declaring it as an unlawful subversive organization. The Jamat-e-Islami, while denying the allegations had contended in the Court that it was a political party and as such could be banned under due process only by the Political Parties Act of 1962.

The Jamat-e-Islami raised the issue of central-provincial powers in its case by contending that lawful banning under the Political Parties Act could only be accomplished by the federal government and not by the provincial governments, as this Act was a central statute. The Supreme Court, while deciding the case on September 25, 1964 declared that banning of the Jamat-e-Islami had violated freedom of association granted under the fundamental rights in the Constitution. Chief Justice A. R. Cornelius held that the allegations against the Jamat-e-Islami should have been ascertained by judicial inquiry. Questioning the constitutionality of the 1908 law, the Court had also taken the opportunity to affirm the right of judicial review vested in the higher judiciary over the legislative as well as executive acts, once again.

3.7 Mass Movement and Imposition of Second Martial Law 1969

Ayub Khan had been enjoying active support of the civil and military bureaucracies, and the Basic Democrats. Until 1968, it appeared that the guided democracy at local, provincial and national level, and an alliance between the civil and military bureaucracy had provided stability to Ayub Khan's regime. In addition, Ayub Khan had also enjoyed greatest advantages over the divided opposition political parties from the very beginning. However, the war of 1965 with India had, later, become the main turning point for the mass movement thus leading to the downfall of Ayub Khan. The alienation of the East Pakistanis also increased as they had been feeling unprotected because they were cut off from the West Pakistan during the war period. The Tashkent Declaration signed by Ayub Khan after

the Indo-Pak War was also interpreted in West Pakistan as equivalent to turning Pakistan's victory over India into a near surrender.¹

The Declaration had also created differences between Ayub Khan and his Foreign Minister, Z. A. Bhutto on the issue of Kashmir and the peace terms.¹ His relations with Ayub Khan both as a Foreign Minister in the latter's Cabinet and as a Secretary General of the ruling Convention Muslim League broke in 1966. Therefore, Z. A. Bhutto decided to form a new political party called Pakistan Peoples Party (PPP) and received warm welcome during his meeting with the people across West Pakistan.¹ The Pakistan Democratic Movement (PDM) was formed in 1967.¹ Another united front, comprising of eight political parties was also formed with the name of Democratic Action Committee (DAC).¹ In fact, when the date of the disqualification of the EBD Oed politicians ended on December 31, 1966, most of them joined the opposition camp and the anti Ayub Khan forces. Air Marshal (Retd.) M. Asghar Khan while declaring Ayub Khan regime as a police state had also entered in politics and joined the opposition political parties.¹

In November 1968, the former Chief Justice of East Pakistan High Court S. M. Murshed, who had resigned earlier, also entered politics and joined the opposition ranks.¹ Lt. General (Retd.) Azam Khan, Major General (Retd.) Akbar Khan, Major General (Retd.) Jilani, and Major General (Retd.) Sarfaraz also joined the opposition. The regional and class disparities, concentration of wealth in few hands and lack of attention by government towards problems of common man had alienated the people from Ayub Khan regime.¹ Dr. Mahbub-ul-Haq, Chief Economist of the Planning Commission had disclosed in 1968 that only twenty-two families were controlling sixty-six percent of the entire industrial capital, eighty percent of the banking and ninety-seven percent of insurance capital.¹ Moreover, Mujeeb-ur-Rehman of the Awami League presented his six point formula for the legitimate rights and maximum autonomy of East Pakistan, which later became his party's manifesto.

In February 1968, the serious illness of Ayub Khan created a major question on the political system which he had provided to Pakistan. For the first time in ten years, it brought forward the issue of his successor in the minds of the people. Ayub Khan realised the serious dissatisfaction of the people against himself only in October/November 1968 with the widespread protests and riots of the students, and an attempt on his life in Peshawar. Ayub Khan's regime dealt the opposition with iron hands and opposition leaders were arrested all over Pakistan. Z. A. Bhutto, during the hearing, addressed to the West Pakistan High Court about his sufferings in confinement, alleged that after resigning from the foreign ministry in 1966, he was warned by the government not to enter politics. However, the charges were denied by President Ayub Khan.¹ The Agartala Conspiracy added fuel to the already tense situation. All the 34 suspected persons accused of conspiracy were arrested and the name of Mujeeb-ur-Rehman, who was already in detention, had also been included.¹

It was in February 1969 that Ayub Khan decided to adopt a conciliatory policy and formally invited the opposition leaders for talks. As a result, the government had to lift the State of Emergency

on February 14, 1969. The detained opposition leaders, Z. A. Bhutto, Abdul Wali Khan and some others were released. However, Z. A. Bhutto and Maulana Abdul Hameed Khan Bhashani decided not to participate in the talks. Awami League also raised a condition to withdraw the Agartala Conspiracy Case and release Mujeeb-ur-Rehman and 34 others detained in this case, and the demand was fulfilled on February 22, 1969. To appease the public sentiments and facilitate the talks, Ayub Khan also announced not to contest the presidential elections for the third term. The opposition political parties and Ayub Khan regime developed consensus on the demands for the restoration of a federal parliamentary system and direct elections for the National and Provincial Assemblies. The future of One Unit scheme and principle of parity were left to be decided by the new parliament. However, the protests and riots at the streets did not decrease; possibly, the opposition did not want to miss the opportunity to bring Ayub Khan down. Some of the politicians were addressing large rallies to demonstrate their popular strength and demanded immediate resignation of Ayub Khan.¹

The situation reached to an extent that the civil bureaucracy and especially the military high command withdrew their support and distanced themselves from the unpopular regime. Thus, Ayub Khan had no option except to resign. In this regard, the procedure laid down in the Constitution of 1962 was that the President will hand over power to the Speaker of National Assembly as Acting President, who will be holding fresh presidential elections within 90 days. However, the opposition political parties were not ready to accept this procedure as the Speaker was also a nominee of Ayub Khan. Another reason was that the opposition had already rejected the presidential system and could not trust the National Assembly for constitutional amendments. The situation needed support of the military for a smooth transfer of power. However, the army too was not ready for sparing any opportunity of assuming political power.¹ Thus the circumstances had left Ayub Khan with no choice other than handing over of the power to the C-in-C of Army. General Yahya Khan was mentally prepared to take over the government.¹ As a result, Pakistan again went under the martial law on March 25, 1969 and the 1962 Constitution was abrogated.¹ Besides the presidential system, the system of Basic Democracy which also failed to satisfy the urges of the people, was scrapped.

General Yahya Khan took a conscious start and declared himself as CMLA of the country. Assuming supreme command of the armed forces, he initially retained the office of the C-in-C of the Army. The office of the President was kept vacant until General Yahya Khan proclaimed himself as the President of Pakistan on March 31, 1969. A Council of Administrators was formed which consisted of heads of the armed forces as the DMLAs. Later, the Chairman of National Security Council and the Chief of the Inter-Services Intelligence were also included in the Council. General Yahya Khan had been impatient about the details of the government related issues; therefore, his regime heavily depended on the Council of Administrators for decisions.¹ However, the implementation was in the hands of the civil administration.¹ A civilian Cabinet was also appointed in August 1969 which worked till February 22, 1971 merely a ceremonial body for discussion.¹ The martial law regulations of 1958 were used with slight modifications and the old administrative structure under the 1962 Constitution was retained.

The main issue to the martial law regime emerged in 1969, when the Lahore High Court declared in a case titled: *Mir Hassan and another Vs. The State* that the courts could exercise their powers without any impediment to jurisdiction. Therefore, the Yahya Khan regime, to put limitations on the powers of the judges, reacted with the promulgation of the Courts (Removal of Doubts) Order 1969. Later, a Legal Framework Order (LFO) was issued on March 30, 1970.¹ The LFO provided the basic guidelines for the general elections and outlined the principles for future course of action, and framing of a constitution by the future National Assembly in accordance with the guidelines in 120 days' time, failing which the assembly was deemed to have been dissolved.

For resolving the issues of centre-province relations, the LFO assured in clear words that the future constitution would be based on the federal system of government. To ensure equal distribution of powers, it granted maximum administrative, legislative and financial autonomy to the provinces thereby keeping sufficient powers for the Centre under the concurrent list of subjects.¹ In the legislature, the principle of parity and the allocation of equal seats to East and West Pakistan were structured based on long debates and compromise by the first and second Constituent Assemblies of Pakistan. However, it was not the responsibility of a military regime to unilaterally decide reversal of the political system without creating national consensus. Moreover, General Yahya Khan had reserved the authority to be assenting the new constitution being passed by the National Assembly as a self-proclaimed President of Pakistan.

The martial law regime showed a commitment to the transferring of power to the elected government after the general elections. However, the basic changes in the political system were instituted through the LFO that should have been done through the constitution only, had made it clear that the intention of General Yahya Khan was to stay in power for long. The politicians had reservation over the 120 days limit for framing the constitution, and the final ratification by General Yahya Khan as President, declaring it as a military-cum-executive control over the authority of a sovereign legislature.¹ However, despite these objections, they welcomed and agreed to participate in the general elections. In any case, the politicians did not want to give the martial law regime an opportunity to delay the general elections. The provision of LFO that the new legislature would be responsible for making a new constitution with simple majority later proved to be disadvantageous for the integrity of Pakistan. It contributed in the political crisis as Awami League, being the majority party after the elections, had refused to compromise on six points. The powerful position in the National Assembly had enabled the Awami League to make the constitution even if no party from the West Pakistan would support it.

3.8 General Elections of 1970 and the Outcome

The taking over of power by General Yahya Khan was coupled with a promise of holding 'fair and free' general elections thereby ensuring a smooth transfer of power to the elected representatives. He appointed Justice Abdus Sattar, a Judge of the Supreme Court as the Chief Election Commissioner

on July 28, 1969.¹ The martial law regime had not banned the political parties, though political activities were restricted temporarily.¹ The election campaign, especially from the East Pakistan, was focused mainly on the demand for provincial autonomy. General Yahya Khan had no intention to aggravate political situation in the country especially in East Pakistan. Therefore, he maintained indirect relations with Mujeeb-ur-Rehman to ensure a smooth transfer of power to the elected government after the general elections. That had been the main reason why the general had allowed political parties a free hand in election campaign especially to the Awami League. Moreover, he also ignored complaints of other political parties against the encroachment of Awami League in their political activities.¹ Another reason was that General Yahya Khan also hoped to secure his position as President of Pakistan in the next civilian setup.¹

Elections to the National Assembly were scheduled on December 07, 1970 and to the Provincial Assemblies on December 17, 1970. The martial law regime had not been expecting absolute majority by any political party. Moreover, they were hoping that a split mandate would provide an opportunity to the military to play a role of in-charge of the new political arrangements for the formation of government. The Chief of NSC and Chief of ISI were assigned an active role in the martial law regime and the processes of democratisation. However, as these institutions had not been trained in the task, therefore, their assessments about the election results proved inaccurate.¹ The generals had also been expecting, although a victory of Awami League and PPP but with marginal seats.¹ In East Pakistan, Awami League secured 160 out of 162 general seats besides seven women seats.¹ PPP was successful in securing 81 out of total 138 general seats in the Western Pakistan. The unexpected election results of both the political parties astonished the military regime. It also changed the context of Pakistan politics as both Awami League and PPP had emerged as regional parties in their character.

After the election results, Mujeeb-ur-Rehman declared on February 28, 1971 that since the six-point formula has been approved by the people in the elections, it was “no more his or his party’s formula” and that Awami League could not amend it. He also announced that no one could stop Awami League from framing a constitution based on the six-point program. Mujeeb-ur-Rehman even adopted a harder stance and demanded for the transfer of power to the civil government first, emphasising that the issues could be settled down later in the National Assembly. However, Z. A. Bhutto as leader of the majority political party in West Pakistan insisted on accommodation of the PPP in a coalition government and did not agree to become the opposition leader. He justified his stance by presenting himself as a check on Mujeeb-ur-Rehman who was leading the situation towards the separation of East Pakistan.¹ The martial law regime was also not willing to transfer power to the Awami League because they had never accepted the Six-point Formula. General Yahya Khan had been on visit to Dacca from January 11 to 15, 1972, but his negotiations with Mujeeb-ur-Rehman did not produce any positive results. On his return, General Yahya Khan also held meetings with Z. A. Bhutto and informed him of his negotiations with Mujeeb-ur-Rehman.¹ Therefore, Z. A. Bhutto also visited Dacca for meeting with Mujeeb-ur-Rehman but the negotiations proved fruitless.

Z. A. Bhutto decided a new strategy to adopt a hard stance with the hope that Mujeeb-ur-Rehman will be compelled for a compromise. He declared that PPP will not attend the session of the National Assembly¹ until the Awami League gives a clear assurance that the suggestions and demands of PPP will be considered. He also demanded that either the session of the National Assembly should be delayed or the 120 days limit for framing the constitution should be eliminated to discuss the issue in detail. As the largest political party of the Western Pakistan was not ready to participate in the session of the National Assembly, General Yahya Khan decided on March 01, 1971 to postpone the National Assembly session so that the political leaders may agree to some sort of settlement. The unconditional transfer of power to Awami League was not favourable to the strategy of General Yahya Khan who had desired to continue as President of Pakistan in the elected setup. Z. A. Bhutto was also demanding some settlement prior to the session of National Assembly and prior to the transfer of power by the military. Therefore, General Yahya Khan found it feasible to take refuge behind Z. A. Bhutto. The military generals continued with their strategy of negotiations, both with the Awami League and the PPP. The National Assembly session was later decided by General Yahya Khan to be held on March 25, 1971.

The delay in holding session of the National Assembly provoked the sentiments of Bengalis. The political movement slipped into the hands of the hard-core of Awami League and Mujeeb-ur-Rehman became in pressure to declare the results of the elections as a vote for independence. However, he still favoured framing of the constitution based on six-point formula rather than complete independence. Indeed, any demand of Mujeeb-ur-Rehman to delay implementation of the independence plan, would have swept him aside by the growing political storm of the people. As part of civil disobedience movement, Mujeeb-ur-Rehman called for a strike throughout the province. The flag of Pakistan and Quaid-i-Azam's portraits were publicly burnt and slogans for an independent Bangladesh were raised.¹ The writ of the Central Government no longer existed in East Pakistan and, in fact, Mujeeb-ur-Rehman had become *de-facto* ruler. He set up a parallel government in East Pakistan and issued directives to government officials, non-government organizations and the public. The Pakistan's flag was replaced by the new flag of Bangladesh on all government and semi-government buildings and private houses.

General Yahya Khan hurriedly visited Dhaka for negotiations with Mujeeb-ur-Rehman and was, later, joined by political leaders from West Pakistan including Z. A. Bhutto. However, it was too late as Awami League had successfully established its *de-facto* control in Dhaka. They shifted their stance and demanded for immediate withdrawal of military rule and transfer of power to Awami League. However, General Yahya Khan issued orders taking a military action which started in the night between March 25 and 26, 1971. The military action led to an all-out civil war and a bloody conflict between the military, supported by the pro-Pakistan minority, and the Awami League and others who supported the Bangladesh movement.¹ The coercive use of military power and bullets against the civilians, the Indian attack, General Yahya Khan's unrealistic strategies and Indian influence on the

Bengalis resulted both in a humiliating surrender of Pakistan military and the emergence of East Pakistan into an independent Bangladesh.

The institution of military had lost its credibility as a nation building force, their reputation was at the lowest ebb and as a result their position in the country was weak. The society showed an unprecedented resentment against the military commanders for losing the war against India and demanded for an open trial of General Yahya Khan and his advisors. The nation also demanded immediate transfer of power to the elected representatives; however, General Yahya Khan and the military high command were still reluctant. The transfer could not happen unless the anger of the junior ranking officers was witnessed in the hall of the GHQ. General Abdul Hamid, the senior most officer after General Yahya Khan went to deliver an address. However, the officers refused to listen him and demanded for an immediate transfer of power to the civilians. Thus, the military Generals were forced by junior officers to relinquish the power.¹ They were not ready to accept General Yahya Khan anymore because they were not ready for taking responsibility of his actions in the crisis of East Pakistan. Brigadier F. B. Ali and other junior officers threatened the forced removal of General Yahya Khan in case he did not relinquish power till December 19, 1971.¹

The Chief of General Staff, Lt. General Gul Hassan and Air Martial Rahim Khan shared the demands of junior officers to General Yahya Khan, thereby leaving him with no choice but to hand over political power to the elected government. Z. A. Bhutto, the Chairman of PPP was called back from meeting of the UN Security Council where he was sent as a special emissary to present the case of Pakistan. In the new political arrangements, Z. A. Bhutto became the first Civilian Martial Law Administrator¹ and the President of Pakistan on December 20, 1971.¹ These offices had been instrumental in enhancing his and his party's position vis-a-vis political opponents and other state apparatus such as the judiciary, civil bureaucracy and the military. Moreover, before the promulgation of 1973 Constitution, Z. A. Bhutto took many policy measures under the informal rules of the new arrangements; the interim constitution of 1972 was a case in point. Z. A. Bhutto became the Prime Minister of Pakistan on August 14, 1973 when the parliamentary system was introduced under the 1973 Constitution. Fazal Illahi Chaudhury, a candidate of PPP was elected as the President of Pakistan.

Now Z. A. Bhutto was enjoying three major political advantages. Firstly, he enjoyed an eloquent political base as an elected political leader along with a comfortable majority of his party in the National Assembly. Secondly, the military was dejected and broken, and their reputation in the people was at the lowest ebb due to the defeat in the war with India. The lowered status of the military assured him that being depressed the generals need some time for coming out of the trauma of the debacle. Thirdly, the Supreme Court of Pakistan had reversed its earlier judgement of 1958 in Dosso Case which had legitimised the Martial Law of Ayub Khan. The Court unanimously declared in April 1972 that the martial law of General Yahya Khan was also an illegal and unconstitutional act of usurpation. Although, this judgement came after General Yahya Khan had already left after handing

over the power to Z. A. Bhutto, still, it supported the supremacy of civilian government over the institution of military.

The elected government of Z. A. Bhutto appointed a Commission headed by Hamood-ur-Rehman, the Chief Justice of Pakistan for examining the reasons of political crisis that led to the surrender of military and the debacle of East Pakistan along with fixing of the responsibility on those found guilty. Since the Commission had recommended trial of some high-ranking officers, the report was not presented to the public, mainly on the recommendation of the military. However, it also reflected the dual policy on the part of Z. A. Bhutto that, on the one hand, he had been trying to strengthen his position vis-a-vis the military and, on the other, to please them by not releasing the report of the Commission. Had he presented report of the commission to the public and let the military bear the responsibility for what they had done in East Pakistan, they might not be able to impose another martial law in future. Moreover, despite assurance that all the copies of the Report were destroyed, a copy was recovered from Z. A. Bhutto's residence two days before his execution.¹

3.9 Verdict of Supreme Court on 2nd Martial Law

The imposition of 2nd military rule in March 1969 was challenged in Asma Jilani Vs the Government of the Punjab Case. This Case provided an opportunity to the Supreme Court for a decisive role in correcting the wrongs committed by the military. Malik Ghulam Jilani and Altaf Hussain Gohar were arrested¹ and were detained under the Defence of Pakistan Rules and Martial Law Regulation respectively. The Lahore High Court and the Sindh High Court while relying on the Supreme Court's decision in Dosso Case, had dismissed their petitions respectively and held that the Courts have no jurisdiction of granting any relief against martial law orders. Both the detainees appealed to the Supreme Court which took on the combined appeal. The question before the Supreme Court was that keeping in view the limitation of courts under the Jurisdiction of Courts (Removal of Doubts) Order 1969, is a High Court empowered to exercise its jurisdiction under the 1962 Constitution for enquiring into the validity of detention of a person under Martial Law Regulations of 1971. Another related question before the Court was whether the doctrine articulated in *The State vs Dosso Case* was correct and applicable.¹

Therefore, three related issues were considered by the Supreme Court. One was related to the validity of the revolutionary legality doctrine, i.e., 'The State Necessity' enunciated in the Dosso Case of 1958. Second related issue was the applicability of this doctrine to the handing over of power by Ayub Khan to General Yahya Khan. Third related issue was the status of General Yahya Khan's Legal Framework Order. While analysing the arguments, the Court concluded that taking over of government by General Yahya Khan was a usurpation of power. Moreover, his taking over of power was not justified under the revolutionary legality doctrine. Consequently, his martial law regime had also been declared illegal.¹ Thus, Ayub Khan's transfer of power to General Yahya Khan was declared as illegal and against the 1962 Constitution. The Court also held that all the legal and administrative measures

taken by General Yahya Khan's unauthorized, unconstitutional thus illegal military regime cannot be declared valid based on legitimacy. Moreover, the Court while using the power of judicial review also over-ruled its decision in Dosso Case thus declaring doctrine of state necessity as illegal.¹

The Supreme Court observed that neither was Kelson's theory a universally accepted one, nor had he attempted to formulate such a theory that favours totalitarianism. The Court held that according to the Objectives Resolution, the legal sovereignty belongs to Almighty Allah alone, and the authority exercisable by the people within the limits prescribed by Him is a sacred trust. It is under this system that the people will choose the functional head of the state and that he should be assisted by an elected assembly which must hold its meetings in public view and remain accountable to the people and only then would be the government by law and not government by man. Thus, the principle enunciated in Dosso's Case could not be treated as good law either as a precedent or even otherwise.¹

The Supreme Court declared that President Ayub Khan had no authority under the 1962 Constitution for handing over of the power to anybody but to the Speaker of National Assembly. It further held that if the transfer of power to General Yahya Khan lacked legal foundation, his declaration of martial law was equally wrong and was without lawful authority. While discussing martial law, the Court concluded that the proclamation of military rule in any case does not empower the C-in-C of the Army for abrogating the Constitution, which he is bound by oath to be defending in every situation.¹ The Court therefore decided that the constitutional and legal duty to restore order invoked by President Ayub Khan for General Yahya Khan was more limited than either understood and could not sanction military rule.¹ Thus, the presidential order of General Yahya Khan limiting the jurisdiction of courts, being sub-constitutional legislation, could not bar the High Courts and the Supreme Court to exercise their jurisdiction given to them under the 1962 Constitution, because the Order was struck down as having been issued by an illegal authority and had therefore been lacking the attributes of legitimacy.¹

The validity of actions taken under martial law remained an equally thorny problem to which the court applied finesse if not determination. Having reversed Dosso Case, the Court could have declared Ayub Khan's regime illegal. Instead, it acknowledged de-facto validity of that regime. It was because the 1962 Constitution had converted it into a constitutional regime. The Court could also have offered de-facto validity to actions taken under the illegal Yahya Khan regime. However, doing it would have required accepting the limits on court powers specified in the 1969 Courts (Removal of Doubts) Order. This judgement can be read not only as a decision about the validity of imposed military rule and the sanctity of constitutions but about proper place for the judiciary in a rightly constituted state.¹

Chief Justice Hamood-ur-Rahman also proposed explicit limits on the necessity doctrine and held that the doctrine of 'State Necessity' can't be used for validating the illegal acts of power usurpers. Neither any such law could be sustained on these grounds.¹ The Court then took two further steps. First,

it placed the responsibility for ensuring public welfare with the judiciary; necessity could be invoked once usurpers were declared illegal and illegitimate. Second, it echoed the legality-legitimacy distinction in the Court's interpretation of the public interest by separating condonation (limited) from legitimation (general). Creating a novel link between strict legality and the common good, the Court established a bridge between law and politics, which was ignored or destroyed in earlier decisions. It proclaimed a strong, central role for the courts.¹

The judgement was widely appreciated and was also criticised because it was decided when General Yahya Khan was not in power. Moreover, the judgement was declared as firing at a dead person.¹ The real test of independence of the judiciary would have been proven, had the judgement been made while General Yahya Khan was exercising the power.¹ The case was heard by the Supreme Court while the National Assembly was drafting a new constitution and was decided just before the Constitution of 1973 was ratified by the Assembly. After this case, Z. A. Bhutto (first-ever Civilian Martial Law Administrator) lifted Martial Law and allowed the elected assemblies for routine functions. The country moved on once again on the road to democratisation after fourteen years of military dictatorship. The case also helped the Court in placing itself on the independent footing which it required and deserved. However, the judges were still obliged to work out a new role for the Court, to sidestep the minefields of process and substance which they felt had helped to cause and certainly, had not prevented military interventions. In addition, they also needed to develop an understanding of the judiciary's role in popularly elected civil government. This case was not only an effort of rectification for the wrongs done by General Yahya Khan, it was also an attempt of combining the political principles and practical politics for determining the appropriate role of the courts in the political system of Pakistan.¹

Z. A. Bhutto government had still to achieve its promised constitution. However, his government could continue, even though it owed its existence to an illegal regime, while serving notice to the government that its arguments were neither seemly nor effective. The judgment in Asma Jilani Case left several questions unanswered. What would happen, were the current martial law not fully lifted? What guarantees could be formulated to restrict future military interference in politics? And as a subtext, where should Pakistan seek the ideological roots of its polity in the absence of its Bengali majority, and how should it organize its future politics? The personal views of Justice Hamood-ur-Rahman on the nature of the polity were neither fully developed nor specifically directed to the economic, political and emotional conditions of the "one-winged" state.¹

Justice Yaqoob Ali hinted at these problems of establishing legitimacy, clearly troubled by the prospect that a National Assembly elected before the war was now writing a constitution for the state that remained after the war. He approved the Justice Munir Court's 1955 Reference requirement that new elections be held before writing a new constitution. The 1972 Court could have stipulated similar conditions for post-war, post-Yahya Khan Pakistan by requiring Z. A. Bhutto to provide for a new constituent assembly. Whether, from weariness or fear of unknown consequences (including, perhaps,

concern about Bhutto's view of a temperamental court), the Court ignored this option. It resurfaced nonetheless in Zia-ur-Rahman Case, a contemporaneous challenge to the political transition in which the Lahore High Court held that the interim constitution was validly enacted.¹

3.10 The Military under Fire and Reforms by Z. A. Bhutto

Since mid-1972, Z. A. Bhutto came hard on the top brass of the military and attempted to bring them under the control of elected government. He tried to institute changes in the institutional structure of Pakistan in such a way that the institution of military might not be able to take over power again, and do not let the powerful Generals to assume the role of king makers. He could retire some Generals on the suspicion of conspiring against his elected government.¹ In total, he relieved some 43 senior military officers from service in the first four months of his assumption of power.¹ Indeed, Z. A. Bhutto had been transferred power from General Yahya Khan with the efforts of Lt. General Gul Hassan. Therefore, he was offered to become the C-in-C of the Army. General Gul Hassan, initially refused, however, later he accepted the offer with a condition to be staying in his existing rank as Lt. General. Although, the office of the C-in-C had been for a full General only but Z. A. Bhutto agreed. In his first speech to the nation, Z. A. Bhutto announced that he had appointed Lt. General Gul Hassan as the acting C-in-C however; he should not expect to be promoted as a full General by the government. General Gul Hassan registered his protest to Z. A. Bhutto over the statement which he rejected by declaring it as a political statement.¹

Despite the withdrawal of military from politics of Pakistan, the senior Generals had maintained resistance to be subordinate to the decisions made by the elected government. It is said that the Army Chief, Lt. General Gul Hassan and the Air Chief, Air Marshal Rahim Khan were interfering in the affairs of Hamood-ur-Rehman Commission. Also, when the police were on strike in Lahore, they had refused for providing the Army troops and the Air Force to extend their support to the civilian government. Later, the Army Chief had refused providing the helicopter to the Governor of Punjab when he had desired to go to Balochistan for resolving the problem of the tribal rebels at Sui.¹ Z. A. Bhutto took it as a conspiracy against the civil government and was successful in engineering a coup against the officers who had been responsible for bringing him to power. The Army Chief and Air Chief were removed through forced resignations.¹ The latter, however, accepted the offer of an ambassadorial position in Europe. According to General Gul Hassan, his disagreement with Z. A. Bhutto had developed from the initial days when the latter had interfered in military's internal affairs. To him, if the President and Army Chief did not see eye to eye, the latter should quit which the General did. However, it confirmed that the Army Chief preferred to resign instead of submitting his allegiance to the elected government. Air Marshal Zafar Chaudhry, the new Air Chief was also removed two years later. Differences soon arose between them when Z. A. Bhutto reversed his decision on the forced retirement of seven Air Force officers by a court martial.¹

Z. A. Bhutto appointed General Tikka Khan as the next Army Chief from March 3, 1972. He was known for his unconditional support to the civil government and had devoted his energies to the capacity building of the Army in its professional field.¹ General Ziaul Haq had been able to establish direct relations with Z. A. Bhutto and presented himself as a loyal, humble and very professional officer, comfortable to work under civilian supremacy.¹ Superseding six senior generals, the prime minister appointed General Ziaul Haq as the successor Army Chief of General Tikka Khan in March 1976. Earlier, General Tikka Khan proved to be a right choice and got retirement in due time without creating any trouble for the civil government. However, his successor, General Ziaul Haq betrayed the trust of his master by not only taking over the government but also hanged his mentor Z. A. Bhutto.¹

Curtailing the central power position of the chief of the army, Z. A. Bhutto renamed the titles of the services chiefs from C-in-C to Chief of Staff in 1972. Moreover, the tenure of the services chiefs was also reduced from four to three years in 1975 but the serving chiefs were exempted. A post of Chairman, Joint Chiefs of Staff Committee (JCSC) was also created in March 1976 on permanent basis, with the President of Pakistan as the Supreme Commander. The office of Chairman, JCSC was without operational control but only a full General was to be appointed to this office. The concentration of more powers of the three-armed forces in the office of Chairman, JCSC could be counter-productive, therefore, the process of promotions remained with the respective services chiefs. Z. A. Bhutto retained the right of vetoing any promotion with the Ministry of Defence, a portfolio that he had been assuming himself.¹ The military considered it as an unnecessary interference in their internal matters by Z. A. Bhutto thereby taking him as a threat to the military as an institution.¹

Z. A. Bhutto was also successful in altering the command and control structure of the military; the Defence Committee of the Cabinet (DCC) is a case in point. The policy related responsibilities in defence and security matter were transferred to the prime minister, the federal cabinet and the DCC. A Defence Council was also established under the Ministry of Defence to ensure that the decisions of DCC are properly implemented. Besides the Ministry of Defence, Chairman JCSC, three Services Chiefs along with their respective headquarters had actively been involved in the policy making decisions. Z. A. Bhutto also instituted constitutional protection against the imposition of martial law and inserted the oath for the military personnel which stopped them from participating in politics. The abrogation or any kind of direct or indirect assistance to an attempt to abrogate the Constitution was declared to be an act of high treason. The Parliament was authorized for framing laws for those found guilty of high treason. The fear of capital punishment on the part of Ziaul Haq and his military junta for imposition of 1977 martial law had become the main reason for the execution of Z. A. Bhutto.

Nonetheless, due to the security threat from India and the hostile attitude of the new Afghan government,¹ the elected government could not antagonise the military for long. To rebuild it as a well-equipped strong institution, Z. A. Bhutto continued generous allocations to the military.¹ The existing units of all the armed forces were expanded, and a new air wing was established in Navy for areal

operations. To fulfil the immediate needs of the military through purchase of weapons and equipment, Z. A. Bhutto maintained Pakistan's membership in CENTO.¹ To streamline the self-reliance in defence production, a separate Defence Production Division was established under the Defence Ministry in 1973. Three new production facilities were established in Gwadar, Sanjiwal and Havelian, and the existing ordnance complex at Wah was given expansion along with modernisation.¹ To facilitate greater cooperation among the three services and the civil administration, the headquarters of Navy were shifted from Karachi to Islamabad in 1974.

The image of the Army in the public was also restored by involving it during natural calamities and military operations. The Military was called to support the elected government in July 1972 to deal with the language riots and later in the labour disturbances in Karachi.¹ They were also called for support in Punjab to deal with the anti-Ahmedia demonstrations in 1974 and in Khyber Pakhtunkhwa (then NWFP) against the tribal uprising in 1976 in Dir. Military operations were ordered against tribal unrest and autonomist insurrections of the Baloch nationalists during 1973-76 in Balochistan. The prime minister had made a rational choice to tactically engage the armed forces in the remotest region of the country, on the one hand, and teach his political opponents a lesson, on the other. However, these military involvements also revived their political role in the country and affected the efforts for establishing supremacy of the elected government.¹

3.11 Z. A. Bhutto's Handling of Political and Constitutional Issues

Since independence, the process of democratisation, institutional strengthening and national integration had but marginally succeeded in Pakistan mainly due to the two conflicting goals, a strong centralised government and the demand for provincial autonomy. To consolidate their own power, any criticism on the policies of federal government was treated as a gesture of treason by the incumbent regime.¹ After transfer of power to Z. A. Bhutto, he dealt with the opposition very brutally to the extent that their role in democracy was not tolerated. This was mainly because he was a product of Ayub Khan's Martial Law.¹ The opposition to pressurise him politically, opted with more preference to the politics of agitation rather to participatory politics. It was because in the upcoming elections, the chances for regional political parties to confront PPP with an electoral victory were very less. Therefore, the opposition political parties raised their demands for the restoration of a true democratic system. Z. A. Bhutto, while safeguarding his party interests, opted to strategically work together with the opposition political parties. The effect of this cooperation was that both the elected government and the opposition political parties had been able to formalise rules of the game in terms of the 1973 Constitution which was passed through parliamentary consensus.

Z. A. Bhutto assumed the office of prime minister of the country for the next five years with a supportive incumbent of presidency being a PPP man. All martial law orders and regulations were given validity and those who initiated it were granted indemnification. However, the opposition political parties were satisfied to have brought Bhuttoism under the law. The newly formulated

Constitution of 1973 provided a parliamentary system, a President as a nominal head of the state, the first ever bicameral legislature as a sovereign parliament with sufficient legislative and financial powers, federal structure with reasonable provincial autonomy, an independent judiciary and a guarantee for fundamental rights. However, in the real sense, the ruling party's impatience towards the opposition parties had proved to be otherwise. All powers were concentrated in the central government along with continuous interference in the affairs of provinces. In fact, the Constitution had provided extra-ordinary powers to the federal government in the name of 'Defence of Pakistan Rules' which had been arbitrarily used by Z. A. Bhutto government against political opponents for establishing its control beyond the established democratic procedures.¹

Z. A. Bhutto's policy in dealing with the higher judiciary was comparatively less compelling. Bhutto had instituted several amendments to the Constitution for curtailing the powers of higher judiciary and not to grant any relief to the political rivals of his government. The 3rd and 4th amendments to the Constitution; an indicator of politics under the rules, were passed specifically for curtailing the jurisdiction of higher judiciary and to limit its powers especially regarding contempt of court and transfer of judges. Although, PPP had been enjoying two-third majority in the parliament, yet he inserted amendments to the Constitution even without the presence of opposition political parties in the sense that the opposition would stage a walk out of the Houses in protest. The Fifth Constitutional Amendment further curtailed the powers of the higher judiciary vis-a-vis the government not to give any relief to the political opponents of the government being detained by the law enforcement agencies. Bhutto government could institute these constitutional amendments in view of the history of higher judiciary, especially the inclinations to political groups, pro-military verdicts, appointments and promotions of judges in higher courts.

In addition, the government of Z. A. Bhutto had also taken advantage of the rivalry among the judges of higher courts which helped in increasing control of his government over appointments, promotions and transfers of judges. Such interference by government had damaged the independence of the judiciary, at time when there had been a need of cooperation among the civilian institutions for gaining strength in the post-military withdrawal period. Similarly, the positive role and active participation of the opposition political parties was inevitable in the process of democratisation. Wasting the political energy for suppressing the opposition parties through amendments to the Constitution weakened the civilian institutions vis-a-vis the role played by the military in regaining their position. A series of constitutional amendments for curtailing powers of the higher judiciary and use of political influence by the executive halted its natural development and its performance as the custodian of the civil rights and political liberties of the citizens of Pakistan. The right of the people to seek judicial remedies against the excesses of the administration was restricted by an elected government.

In the general elections of 1970, PPP was unable to secure any seat in the assembly of Balochistan and secured only four seats in the assembly of Khyber Pakhtunkhwa (then NWFP).

Initially, Z. A. Bhutto respected the mandate given by the people of respective provinces, and had lifted all bans from National Awami Party (NAP) imposed by General Yahya Khan due to their alleged involvement in the cause of Pakhtunistan. The NAP and Jamiat Ulama-e-Islam (JUI) formed coalition governments both in Khyber Pakhtunkhwa and Balochistan. Importantly, when Z. A. Bhutto became President of Pakistan, the governorship of both these provinces went to NAP-JUI, because PPP government had signed a tripartite agreement with them thereby agreeing to the appointment of the provincial governors with their consultation. However, within a few days, the agreement came under clouds and both the provincial and central governments indulged in confrontation. Abdul Wali Khan, the leader of NAP had also been quite vocal against the imposition of civilian martial law and emergency by Z. A. Bhutto. He had argued that signing of the agreement in any case did not mean that we have agreed for imposition of martial law and/or the vote of confidence to the civilian martial law regime.¹

Z. A. Bhutto, to pursue his agenda of nationalization, had been attempting for making inroads in the constituencies of NAP and JUI. The NAP-JUI alliance rigorously confronted such attempts thereby affecting the consensus developed on informal rules of the game. The confrontational politics between PPP, led by Z. A. Bhutto and the leadership of NAP-JUI resulted in losing the office of chief minister and governor by the latter in Balochistan. Within ten months, the Ataullah Mengal's cabinet was dismissed on February 15, 1973. The federal government imposed governor's rule in both the provinces on February 16, 1973. The Mufti Mahmood's cabinet in Khyber Pakhtunkhwa also resigned as a protest over Bhutto's new alliance with Qayyum Muslim League (QML).¹ Abdul Wali Khan and the *Sardars (tribal chiefs)* of Balochistan were highly critical of Z. A. Bhutto's dealing of the opposition and were not ready for submission of their demands against the authoritarian rule of PPP.¹

A largescale agitation was launched against Z. A. Bhutto government while the latter opted for using coercive measures in dealing with the situation.¹ The army action was also started in Balochistan to control the situation which lasted till the military coup of 1977. The separatist movement of Baloch, both in Pakistan and Iran wanted to establish an independent state of Greater Balochistan. Therefore, Z. A. Bhutto was fully supported in his military expeditions in Balochistan by the King of Iran who was concerned about the movement of the separatist elements. The use of army further increased the prevailing differences between the federal and the provincial governments in Balochistan and Khyber Pakhtunkhwa (then NWFP). Moreover, it also increased the role of military in political affairs thus exposing the weakness of the elected government in dealing with the political issues and maintenance of law and order.

However, when the arms were discovered in the Iraqi Embassy in Islamabad, Z. A. Bhutto got an opportunity to publicly talk about the intentions of NAP leadership. The most vocal opposition, the NAP was banned in 1975, assets of the party were confiscated and its leaders were put behind the bar on the charges of anti-state activities and its alleged involvement in the assassination of Hayat Mohammad Khan Sherpao, a PPP leader in Khyber Pakhtunkhwa. Subsequently, Abdul Wali Khan and

43 other top-level leaders were put on trial for anti-state activities before a special tribunal.¹ In-camera proceedings of the tribunal were held in Hyderabad jail and therefore it was often called as Hyderabad Tribunal. This case was under trial when the government of Z. A. Bhutto was overthrown by the military in July 1977. However, General Ziaul Haq withdrew the case and NAP leaders were released. These strategies of Z. A. Bhutto and his personal style of rule increased greater distrust between the elected government and the opposition political parties, thus undermining the prospects of political processes for democratisation and institution building.

In the 1970s, Z. A. Bhutto rose to political eminence and portrayed himself and perceived by the public as a democratic politician. Although, the PPP was a political party of national stature, yet Z. A. Bhutto never encouraged intra-party elections. Instead, he used to nominate members to the Central Executive Committee and various other national, provincial and local level positions. The party expanded across Pakistan but organizational structure remained weak due to the personal control of Z. A. Bhutto.¹ Moreover, his personal conduct in dealing with political issues and political style contributed less in promotion of the rule of law. Z. A. Bhutto could not control his authoritarian tendencies when he was restricting the freedom of judiciary, freedom of press, and participatory role of opposition political parties through a series of constitutional amendments. A section of civil society also blames him that to appease the religious forces, he restricted the freedom of religion i.e., when in 1974 Ahmedia Community was declared a minority because of their beliefs.¹ However, there was no curb on their 'Right to Expression.' Z. A. Bhutto also made efforts for curtailing the powers of civil and military bureaucracies. However, still he had to rely on military support for crushing the nationalists in Balochistan.¹ In addition, the nuclear program of Pakistan was initiated by Z. A. Bhutto mainly for his alleged efforts of reducing the influence of military in politics vis-a-vis increasing his own prestige.¹

The confrontational politics by the opposition shows that their attitude and behaviour was equally hostile in dealing with the government. Moreover, the elected government and the opposition political leaders on occasions demonstrated cooperation and understanding. However, they were not successful in resolving their political differences mainly on the functioning of parliamentary system and political participation for the consolidation of democracy in the post-military withdrawal period. Their inability to resolve differences encouraged the military to disrupt the democratic setup. Therefore, the government of Z. A. Bhutto was ended in July 1977 with another martial law imposed by the Army Chief General Ziaul Haq, thus packing the setup with an interregnum of five and a half years of civilian rule.

Notes and References:

Chapter - IV

THIRD MARTIAL LAW AND CONSOLIDATION OF AUTHORITY FOR THE LONGEST MILITARY RULE

This chapter focuses on the imposition of third martial law and its continuation till the mid of 1980s. It deals with the general elections of 1977, the agitation and handling of the opposition by the Bhutto government. The chapter analyses the reasons for the imposition of third martial law, military regimes' punitive actions against the opponents. It also evaluates the role of judiciary in the legitimization of martial law, the Nusrat Bhutto Case, the trial and execution of Z. A. Bhutto and the partnership of military with the likeminded politicians. In fact, the dynamics involved in the consolidation of power by military regime included the accountability, Islamisation program, amendments to the Constitution, the imposition of Provisional Constitution Order (PCO), handling of the Judiciary and the opposition are part of this chapter. In short, this chapter discusses all the measures taken by the military regime to stay in power for a longer period against their initial plan of holding free and fair elections.

4.1 Background of Ziaul Haq's Taking Control of Power

Since assuming power in 1971, Z. A. Bhutto faced strong resistance from the opposition political parties which held him responsible as one of the key actors for the disintegration of Pakistan.¹ Z. A. Bhutto also failed to develop consensus with the opposition political parties. The elements of accommodation, reconciliation and political large heartedness were substantially missing from the politics of Pakistan during Z. A. Bhutto era. The interference of Z. A. Bhutto's federal government in the affairs of the provinces was a clear violation of the Constitution of 1973 along with his personal style of politics which had already brought the rightist and the leftist political forces on one page against him. Therefore, nine opposition political parties became united in a common platform for the 1977 elections, called as the Pakistan National Alliance (PNA).¹ Their viewpoints on Bhutto's nationalisation policy were divergent and not uniform. Despite this, they bargained on the enforcement of Islamic System (Nizam-i-Mustafa) as evident from their electoral speeches.¹ The alliance consisted of heterogeneous platforms who differed on issues such as nationalization and provincial autonomy.

Z. A. Bhutto, on the other hand, was satisfied over the favourable reports from the intelligence agencies on the election results. The DG ISI had reported that the popularity of the Prime Minister was at peak and that this would be a suitable time for encashing his popularity through holding of an early general election. Z. A. Bhutto, having encouraged by the reports about his performance and popularity, announced the early general elections.¹ The schedule for second general elections in Pakistan was originally fixed for March 1978. However, Z. A. Bhutto's regime decided in January 1977 to hold the general elections prior to the scheduled, i.e., on March 7 and 10, 1977.¹ It is alleged that this decision

was taken as a technique for depriving the opposition political parties to have sufficient time for election campaign. The ruling Pakistan Peoples Party (PPP) had already been preparing itself for general elections from the past several months.¹ Immediately after the announcement of the election dates, Z. A. Bhutto launched a country-wide election campaign. However, some restrictions were imposed on the opposition parties and section 144 was imposed in several districts on the pretext of law and order.¹

Contrary to the elections of 1970, several feudal lords and other influential were successful in obtaining party tickets for 1977 elections. Majority of them had to face defeat by relatively unknown candidates of PPP in 1970 elections. The PPP became a 'Modern Muslim League' as majority of disgruntled politicians from Muslim League had joined it.¹ To strengthen the support of the peasants, Z. A. Bhutto also announced second part of land reforms.¹ Prior to the elections, M. Asghar Khan alleged that the ruling PPP had been engaged in manipulating the election results.¹ When the results were announced for the National Assembly polls, the PPP had obtained 155 out of 200 seats. On the other hand, the PNA bagged 36 seats only.¹ Although PPP's victory was expected by the people, yet the exceptional party score was beyond their imagination. The PNA leaders accused Bhutto government of massive rigging in the elections.¹ To register the protest, the PNA decided to boycott the provincial assembly elections¹ which were scheduled for March 10, 1977, due to which PPP secured larger majorities in all the provinces.¹

The PNA, having lost the elections, did not accept the results. The PNA successfully staged a countrywide strike on March 11, 1977,¹ which assured them of the public support. The PNA candidates also reported that the local administration did not allow them for not submitting their nomination papers. The unopposed election of 19 members to the National Assembly and of 66 members to the provincial assemblies turned the suspicion into a reality about the possible rigging. Z. A. Bhutto knew the election results on 30-40 seats were fabricated in favour of the government.¹ Z. A. Bhutto was not ready to take risk for lesser seats though, it was quite clear that PPP could easily win a simple majority. Z. A. Bhutto probably wanted to obtain a two-third majority.¹ Before the elections, the opposition declared that the restoration of democracy, Z. A. Bhutto's westernized living style, pro-socialism policies and economic mismanagement were the major issues.¹ However, the allegedly rigged elections resulted in a new wave of resentment. The opposition political parties, while rejecting the election results, raised their demand for holding fresh general elections. However, Z. A. Bhutto paid no heed to their demand, declaring it just a facade created by the opposition political parties. He also declared it as a general attitude of the losers of elections in the third world countries.¹

To further pressurise Z. A. Bhutto, the opposition political parties resorted to the politics of agitation. The opposition rallies attracted people from different sections of society mainly involving students, youth, women, lawyers, professionals, business community and the Ulema. The deliberate violation of law and order and confrontation between the opposition and the law enforcement agencies became a routine. The agitation spread throughout the country in the form of strikes and protests which

soon transformed into a political movement. Now the opposition demanded that the holding of fresh elections be preceded by the resignation of Z. A. Bhutto. However, Z. A. Bhutto based on such demands, declared that a foreign hand especially that of the US was involved to aggravate the situation thus accusing leaders of the opposition as foreign agents.¹ Z. A. Bhutto government imposed section 144, retaliated with some oppressive measures like using tear gas, baton charge and even firing on the protestors. The top opposition leaders were put behind the bars,¹ thus providing the religious groups with a chance to lead the movement.¹ The religious opposition groups used mosques to deal with section 144 and accused Z. A. Bhutto of faithlessness in religion. Bhutto government lost patience and the police and Federal Security Force (FSF) entered the mosques, harassed the demonstrators while beating and arresting them. It sparked a great resentment and consolidated the impression about the government intention to use all measures of repression.¹

The real problem surfaced with the failure of the FSF and police in restricting the agitation of protestors in April 1977. Now the PNA-led politics of agitation was transformed into a confrontational politics. The results were that Z. A. Bhutto, although striving to assert his grip over the military vis-à-vis the opposition political forces, decided the declaration of martial law; though under the Constitution¹ in Lahore, Karachi and Hyderabad in April 1977.¹ A constitutional amendment was instituted by the parliament which authorised the Prime Minister with the power to hold referendum for taking a vote of confidence from the nation directly. Moreover, the Army Act was also amended which validated the military action with retrospective effect. It shows that military needed little convincing by the Prime Minister and inclination of military to take over the major cities keeping in purview the government's failure to control the situation. With this action the military was once again made in-charge of the political business as it practically got involved in the process of decision making with a legal cover.

Z. A. Bhutto took only the Army Chief in confidence prior to the imposition of martial law and the Chairman JCSC General Mohammad Sharif was not consulted.¹ It was because Z. A. Bhutto had selected General Ziaul Haq to the post of Army Chief, superseding eight Lt. Generals senior to him because apparently the former had considered him more trustworthy and benign.¹ During the crisis, General Ziaul Haq also assured Z. A. Bhutto regularly for his relentless support. On the other hand, the senior military commanders were of the view that the demands of the opposition political parties and religious groups for fresh elections should be accepted. However, General Ziaul Haq was determined that holding a referendum would be enough to deal with the volatile situation. Moreover, General Ziaul Haq misinformed the prime minister that the military had no reservation about holding of the referendum.¹ However, it is noteworthy to say that holding a referendum was in clear violation of the parliamentary form of government because the vote of confidence by Prime Minister is normally taken from the parliament and not directly from the people.

Z. A. Bhutto invited the army commanders for attending the cabinet meetings which were meant to discuss the law and order situation. From April to July 1977, the Generals, on behest of the

government, could closely observe the whole process of discussions in cabinet for controlling the situation. The prime minister started holding separate meetings with the senior Generals and the Army Chief. Bhutto wanted to show the opposition that the military was on his side. He also made the Chairman JCSC General Mohammad Sharif to issue a policy statement regarding military's support to the prime minister.¹ However, the PNA wanted to persuade the Generals to stop extending their support to Bhutto regime which was struggling for its survival. The Army Chief denied request of PNA for a meeting. Bhutto government however provided the PNA leaders under detention, an opportunity of interaction with the army commanders as the latter were authorised to have briefing sessions with them over the security situation of the country. This opportunity backfired in the longer run as the military could gauge the level of support of the politicians for Z. A. Bhutto. It was easier for General Ziaul Haq to take over the government as anti-government sentiments of people and political leaders persisted. Ironically, thousands of letters and telegrams were sent to the Army Chief by commoners and leaders of the opposition political parties demanding for an immediate takeover of the elected government, which later became a basis of military takeover.

Meanwhile, during a speech on national TV, Bhutto declared: "I am weak but this chair (of prime minister) is not."¹ However, due to the intensity of the situation, Z. A. Bhutto bended and he turned to negotiate with the PNA leaders.¹ They were invited to Sihala for negotiations in the first week of June 1977. Bhutto agreed for holding fresh elections in November 1977. Five ministries were also offered to members from PNA in the cabinet for the interim duration. However, the leaders of PNA demanded 50 percent ministries in the interim cabinet and demanded for holding of fresh elections prior to August 14, 1977. Finally, Z. A. Bhutto accepted most of the demands of PNA and the hope for signing an agreement was bright. However, before that could happen, Z. A. Bhutto departed on a foreign tour of Saudi Arabia, Libya, UAE, Kuwait and Iran to show his gratitude to the leaders of these countries for support during the political crisis in Pakistan. The opposition parties took this step of Z. A. Bhutto as a delaying tactic and backed out from signing any agreement with the government. They raised fresh demands to which Z. A. Bhutto became ready to accept once again, however, this time the Army Chief thought differently.¹ The refusal of Army Chief to accept fresh demands of PNA created doubts as to why General Ziaul Haq was not letting Z. A. Bhutto to accept.

Now the leadership of PNA did not trust Bhutto and wanted to topple his government at any cost. At this critical juncture of political situation, a section of the opposition politicians played the role of spoiler and called upon the military to intervene. Air Marshal (Rtd.) Asghar Khan, President of Tehreek-e-Istaqlal, wrote an open letter to the three services chiefs requesting them not to accept the unlawful directive of the prime minister.¹ The letters of politicians gave impression in favour of the military takeover for conducting free and fair elections.¹ Some of the close aides asked Z. A. Bhutto to appoint another prime minister of his own choice temporarily until the fresh elections could be held. However, Z. A. Bhutto did not agree to this suggestion. Moreover, he also felt fearful of Asghar Khan who could become a leader of his calibre.¹ However, the military under General Ziaul Haq was having a clear support of the conservative forces because General Ziaul Haq had encouraged the observance of

religious practices in the military. Z. A. Bhutto shared reports with the Army Chief about some of the Generals who had developed relations with the leaders of opposition political parties. General Ziaul Haq denied the allegations and asked to remove IB's watch on military officers. Z. A. Bhutto complied the demand and military officers were freed from the surveillance.¹ The support of military encouraged the opposition to harden its stance and refuse any compromise with Z. A. Bhutto, despite his acceptance of their demands.

Z. A. Bhutto, on his part, tried for some sort of negotiation with the leaders of PNA in the crucial post-election scenario; for example, declaring Friday as a weekly holiday. The problems continued despite the continuous negotiations between Z. A. Bhutto and the opposition leaders. The impatience of military was escalating with increase in the magnitude of violence.¹ Three Brigadiers in Lahore demanded to be relieved of the martial law duty, or they were ready to offer resignation.¹ The refusal of military officers to fulfil the orders was the sign of rising indiscipline within the military. As a result, the Brigadiers were dismissed from their services.¹ The military high command warned the civil government about their worries of the response of the military officers to the public protest and their unwillingness for the civil government's actions.¹ However, both the opposition political parties and the Z. A. Bhutto government did not realise the indirect warning about military's takeover, of which the international media regularly reminded.¹ The isolation of Z. A. Bhutto was created by the military. The political forces were interested not only on toppling the civilian government but also get the minus one formula enforced for getting rid of Z. A. Bhutto. The political forces underhandedly supported the military without realising that the repercussion of this support was to produce in the coming years.

4.2 Imposition of Third Martial Law and its Validation by the Supreme Court

The crucial phase of negotiations between Z. A. Bhutto government and opposition leaders was progressing well in the first week of July 1977. On July 03, 1977, the leaders of PNA demanded more assurances and presented two fresh demands. Z. A. Bhutto, at that point only felt a stir in the military elite and could hear whispers in the corridors of GHQ. Out of fear of the military intervention,¹ Bhutto unwittingly agreed to the demands of opposition to hold fresh elections and almost all the demands of the opposition were accepted.¹ The decision to accept the fresh demands of the opposition leaders was taken after his meeting with the cabinet on July 04, 1977. This meeting was also attended by the Army Chief General Ziaul Haq during which Z. A. Bhutto also consulted him separately. The decision of reconciliation with the opposition was announced by Z. A. Bhutto in a press conference at midnight of July 4-5, 1977. However, there is little historical evidence that this acceptance of the demands was conveyed to the leaders of PNA and the Army Chief.¹ Still, it was clear from

the press conference that the information had been passed on to all the opposition parties and other stakeholders involved in the political crisis.

Keeping in view the hidden agenda of the military, it seems that they had lost the patience and the army commanders had authorised the Army Chief for the imposition of martial law as a second line of action. Both, Z. A. Bhutto and General Ziaul Haq returned from the reception of the United States Ambassador at 01:00 a.m.¹ However, the Army Chief, General Ziaul Haq giving the impression of a deadlock directed the 10 corps and 111 Brigade, already in line to take over the government.¹ General Faiz Ali Chishti was assigned with the task to institute this operation called Fair Play.¹ The coup was prepared in consultation with the military high command.¹ Fearing the coup, Z. A. Bhutto had placed the position of the Chief of General Staff (CGS) under his direct control, who is normally in-charge of eighty percent of army affairs while the Army Chief deals only twenty percent of the left matters. Knowing this, General Ziaul Haq kept the CGS completely out of loop in the military coup of July 1977.¹

Thus, the Army Chief struck down a military coup for the third time in Pakistan by dismissing the first popularly elected government of Z. A. Bhutto and imposed martial law on July 05, 1977. The political leadership, both from government and the opposition, including Z. A. Bhutto were held under protective custody. All political activities were banned and, unlike the martial laws of General Ayub Khan and General Yahya Khan, the 1973 Constitution was suspended and not abrogated. The Army Chief, General Ziaul Haq became the Chief Martial Law Administrator (CMLA) of the country. While addressing the nation, General Ziaul Haq declared that, in case the political leaders both in opposition and government had resolved their difference, he would have never taken over the government. Moreover, General Ziaul Haq promised that he would not take any action which was likely to restrict the independence of judiciary.¹ However, it is a fact that martial law was imposed just two days after the initial framework of an agreement for resolving the political crisis had reached between both the opposition and the ruling Pakistan Peoples Party (PPP).¹

Most of the factions of society welcomed the imposition of martial law.¹ General Ziaul Haq promised to hold free and fair elections and the restoration of democratic setup within three months. The governorship in each province was assigned to the chief justices of the high courts of concerned provinces just for obliging the judiciary.¹ It proves that the military wanted to pave the way for legitimising its rule by giving a message to the masses that the rule of law has been restored.¹ Later on, General Ziaul Haq replaced these governors with the army generals in all the four provinces who were

assigned duties as Deputy Martial Law Administrators (DMLAs).¹ General Ziaul Haq presided over a Military Council comprised of senior military officers from all the three services.¹ Some likeminded civilians from the ex-federal ministers along with the favourable politicians were also appointed as cabinet ministers.¹ Moreover, General Ziaul Haq assumed the presidency of Pakistan on September 16, 1978 after the resignation of President Fazal Elahi Choudhry.¹

When General Ziaul Haq dismissed the government of Z. A. Bhutto and declared military rule, the US administration under President Jimmy Carter strongly condemned the imposition of martial law and Pakistan was also to face anti-democracy sanctions. The relations with international community further aggravated when General Ziaul Haq did not accept the mercy requests by the heads of the Western and Muslim countries for sparing the life of Z. A. Bhutto.¹ However, the United States is accused of its alleged involvement in the political crisis and removal of Z. A. Bhutto mainly due to his policy on nuclear program.¹ The Soviet invasion of Afghanistan in December 1979 dramatically changed the geopolitical significance of Pakistan thus increasing it manifold.¹ The entry of Soviet forces in Afghanistan increased the security threat to Pakistan and other states in the region which was alarming the West. The martial law regime of General Ziaul Haq found another justification to prolong its rule in Pakistan.

Therefore, this development in the region provided an opportunity to the military regime of General Ziaul Haq to get legitimacy from the international community. Now the United States policy of hostility towards Pakistan completely transformed into friendship.¹ General Ziaul Haq was now needed by the West for one reason which was to make the world a unipolar super power and his martial law regime was no more a matter of concern to them. His whole-hearted support was required for strengthening the Afghan resistance against the Soviet backed government in Kabul. Now, the international community was least concerned about democracy, religious fundamentalism or even nuclear assets of Pakistan. The United States collaboration with the military regime of General Ziaul Haq caused a serious blow to the struggle for restoration of democracy and blocked the prospects of transfer of authority to the civilians.

Manoeuvring and manipulating the higher judiciary for getting favourable decisions has been practiced by all military regimes in Pakistan. However, from the very beginning, the martial law of General Ziaul Haq received the blessings of higher judiciary, and he even consulted the Chief Justices of Pakistan on almost every important legal issue.¹ After his military coup in July 1977, General Ziaul Haq approached the Supreme Court of Pakistan and held meetings with the Chief Justice Yaqoob Ali Khan to seek his legal advice on the issue and the necessary steps to be taken on them. It is an open secret that it was Justice Yaqoob Ali Khan who advised General Ziaul Haq to put the Constitution in abeyance. Again, it was the same judge who had recommended advocate Sharif Uddin Pirzada as the Attorney General and chief advisor to the military regime of General Ziaul Haq.¹ It was quite ironic that Justice Yaqoob Ali Khan did not realise that as Chief Justice of Pakistan, he will be presiding over the Bench to decide the legality of the constitutional changes.

Begum Nusrat Bhutto, the wife of Z. A. Bhutto, who assumed the leadership of PPP after the detention of her husband and had challenged the imposition of Martial Law in the Supreme Court along with the detention of Z. A. Bhutto through a constitutional petition titled: Begum Nusrat Bhutto Vs Chief of Army Staff and Another. The Supreme Court accepted the petition but the Chief Justice of Pakistan, Justice Yaqoob Ali Khan was removed from the office before the hearing of the petition. Various constitutional points were discussed regarding the imposition of Martial Law by the new Chief Justice Anwarul Haq. Ultimately, the Supreme Court dismissed the constitutional petition filed by Begum Nusrat Bhutto for being inadmissible, and all the judges unanimously granted validity to the imposition of military rule under the Doctrine of State Necessity on November 10, 1977.¹ Thus, the new chief justice did not resist in granting certificate of legitimacy. Moreover, the judgement empowered General Ziaul Haq to institute all kinds of legislative measures which could have been taken under Constitution of 1973 including the power to amend it. The Supreme Court judgement based on the Doctrine of Necessity proved a blessing in disguise for the rulers. However, the Supreme Court retained the right of judicial review including hearing petitions against the martial law actions, under Article 199 of the 1973 Constitution.¹

Later, Justice Dorab Patel disclosed that the words related to the empowerment of the CMLA to amend the Constitution, were not included in the original judgment which had been circulated amongst the members of the Bench. He further claimed that those words were added later by Chief Justice Anwarul Haq after getting the judgment signed by members of the Bench.¹ The Chief Justice met Attorney General Sharifuddin Pirzada in a private party one day prior to the announcement of the judgment. The Chief Justice shared with him that the Court had reached on a decision to declare the imposition of martial law as legal and that the judgment would be announced the next morning. The Chief Justice asked Sharifuddin Pirzada if he would be attending the Supreme Court session. Sharifuddin Pirzada responded in positive on the condition if the power of amendment in the Constitution was granted to the CMLA. However, Chief Justice Anwarul Haq gave his response in negative. Sharifuddin Pirzada replied that then the military regime would be thinking for swearing in a new Chief Justice. Therefore, Justice Anwarul Haq included the words, 'including the power to amend it (constitution)' in the judgment without consulting other judges of the Bench.¹

The detailed judgment of Supreme Court said that the political situation was much critical after the movement was launched by PNA against the government of Z. A. Bhutto. The movement converted in confrontational politics thus leading to the breakdown of law and order bringing the country on the verge of disaster. Therefore, to save the country from collapsing, promulgation of military rule had become inevitable. The judgment also stated

that the Court had found it reasonable to validate the extra constitutional step taken by the Army Chief in the best interest of the country at a time when there was grave national crisis with a possibility of the breakdown of the Constitution. Another reason was the solemn pledge given by the Army Chief that this period of constitutional deviation shall be as short as possible. The period of constitutional deviation described in the judgement meant the duration between the military coup and the holding of fresh elections.

Thus, to be brief, it was expected by the Court that the duration of military rule would not prolong and that the military regime would hold free and fair elections on priority basis. The Supreme Court judgment also declared that it would be observed that the declared objectives of military regime would create such conditions to be suitable to hold free and fair elections in accordance with the Constitution of 1973. The Constitution was not abrogated rather partially suspended. Only certain parts specifically, that dealt with the federal and provincial executives and legislatures were held in abeyance. However, the President could carry out his responsibilities under the original Constitution. The Court further declared that soon after the elections, the power was to be handed over to the elected members of the new legislatures. In view of these unambiguous declarations, it was quite clear that the CMLA has assumed power for his declared purposes, or that he has intention for restoring the democratic set up under the Constitution of 1973.

Indeed, keeping in view the necessity to complete the process of accountability of public office holders, the scheduled elections were postponed for some time. However, the declared intention of the CMLA, that he had taken over for a temporary duration with a limited purpose of holding free and fair elections for bringing the country back to democracy, would remain intact. But, despite the Court's clear declarations, the elections were postponed twice by the military regime. He instituted cosmetic amendments in the Constitution for his own benefits. General Ziaul Haq regime interpreted the judgement of the Supreme Court for granting him unrestricted powers to amend the Constitution. However, the legal experts and superior judiciary maintained that the powers conferred by the Supreme Court were meant for necessary amendments especially those relevant to the holding of free and fair elections. The situation worsened when General Ziaul Haq used harsh punishments for those who resisted his martial law including journalists, politicians and party activists.¹ The tension raised further when actions were taken against the academicians and they were convicted by the military courts. The Bar Associations condemned such measures and passed resolutions in protest.

The countrywide demonstrations increased pressure on the higher judiciary for using its powers under the Constitution and checking the executive orders, changes in the Constitution, and martial law actions of General Ziaul Haq. No doubt, these powers were exercised beyond the authority granted by the Supreme Court. The trial of Yahya Bakhtiar, the Attorney General of Z. A. Bhutto was declared illegal and un-Islamic by the Balochistan High Court. The military court's decisions were also challenged in the same High Court and it struck stay order against the capital punishments and other sentences.¹ Therefore, the CMLA, General Ziaul Haq invited Chief Justice of Lahore High Court, Justice Mushtaq Hussain and the Chief Justice of Pakistan, Justice Anwarul Haq in May 1980 to have consultation over the amendments to the Constitution in this regard. Both Chief Justices played a key role in the preparation of a draft of constitutional amendments. These changes were inserted in the Constitution through a presidential order which was promulgated on May 27, 1980. It barred the High Courts from exercising their writ jurisdiction and issuing any declaration related to the validity of martial law regulations or martial law orders.¹ No doubt, the insertion of this Constitutional Amendment was a clear violation of the judgment of Supreme Court in Nusrat Bhutto Case. The judgment had clearly stated that the Supreme Court and High Courts would continue with the exercise of their powers of judicial review against all martial law orders and actions.¹

The Supreme Court judgement in Nusrat Bhutto Case resulted in the derailment of democratic process in Pakistan for the coming eleven years. The judgement played a very negative role by providing a blanket cover to the imposition of military rule by General Ziaul Haq. Once again, the malfunctioning of executive allowed the military to utilize it as an opportunity of intervention whereas the judiciary provided protection to this action. While criticising the role played by the higher judiciary and the military, the incompetence of executive could not be ignored. It has always been some insufficiency, malfunctioning, autocracy or authoritarianism of the executive that has created opportunities of military intervention in Pakistan.

4.3 Accountability and Islamisation as Policy Options to Prolong Military Rule

After the imposition of military rule on July 05, 1977 General Ziaul Haq portrayed himself as a reluctant coup maker and presented himself as a reformer who would leave the corridors of power after holding fair and free elections to bring the country back to democratic system. He had pledged on several occasions that no barrier will be allowed in the way of holding fresh elections. General Ziaul Haq visited Z. A. Bhutto with assurance of holding fresh elections within 90 days.¹ He had declared in his first press conference that the military had to intervene because all the negotiation efforts between civil government and the opposition political parties had failed, and that the country was on the verge

of another civil war.¹ General Ziaul Haq appointed Justice Mushtaq Hussain of Lahore High Court as Chairman of a Committee established for formulating the procedures and rules for election.¹ Two days after this decision, Justice Mushtaq Hussain was also appointed as Chief Election Commissioner (CEC). He announced the same day for holding of the new elections in the first fortnight of October 1977 under the close supervision of the military and the judiciary for ensuring transparency.¹

However, before the elections, he wanted accountability of those political leaders whose reputation was unsound. In fact, the policy measures undertaken during this period were hardly those of an interim military set up and he never conducted accountability in the real sense.¹ The later initiatives of the CMLA revealed that he had imposed martial law to stay in power for a longer period than expected. As General Ziaul Haq lacked political acumen, he made many decisions in hurry which were revoked by himself with new policies and orders. General Ziaul Haq understood very well that the military had suffered a humiliating defeat and most of the blame for the dismemberment of East Pakistan in 1971 had been attributed to military rulers of the time. Therefore, he did not reveal his agenda at the outset and only gradually unfolded the plan.

His hidden agenda to prolong his rule was surfaced when instead, announcing an Annual Development Plan, a long-term economic policy measures were inserted in the Fifth Five Year Plan (1978-83). It emphasised a drastic shift in the strategy by giving substantial support to the private sector which regained the prominence lost due to the PPP government's Nationalisation Program.¹ Although, political problems existed in Pakistan, yet the long-term strategy of General Ziaul Haq showed that the personal ambition of the Army Chief cannot be ruled out that became an immediate reason for the imposition of military rule. The military had a justification for its direct intervention in the best interest of Pakistan which, in its view, was on the brink of a civil war.¹ However, the political situation after the coup did not prevent the military from holding fresh elections and to transfer power within the given time frame. Pakistan had the longest martial law of the history (1977-1985).

Only six weeks after the imposition of martial law, General Ziaul Haq announced the establishment of the Islamic Ideology Council. It was given the task to prepare an outline for an Islamic Theocratic State. These actions were confirmation of his intentions expressed in his first speech that the introduction of an Islamic System is an essential prerequisite for Pakistan.¹ Later on, General Ziaul Haq recalled again that, after promulgation of martial law, he had clearly expressed the priorities of military regime in which the introduction of an Islamic System stood at the top.¹ This declaration confirmed that the transfer of power to civilians was but only a secondary consideration and was also an alternate option which was to be prevented as much as possible. However, it was unrealistic and impossible that the right of an elected government could be denied to the people. The reason is that it is difficult to ignore the fact that since March 1977, Pakistan had been struggling with the

demand of a mass movement for free and fair elections for democracy.¹ In fact, this reality compelled the military to devise a strategy wherein the politicians were to be alleged for the postponement of the elections. Thus apparently, the military was portrayed to be willing for transfer of power, but the politicians were not fit to hold such high offices.¹

Preparations for holding the general elections continued. All the leading politicians were called to a Conference on September 13, 1977 at the GHQ Lecture Hall to devise a code of conduct for the political parties. Besides other politicians, the conference was also attended by Begum Nusrat Bhutto and Abdul Hafiz Pirzada.¹ A code of conduct was settled after detailed discussion which was later revealed to the media for dissemination. The code of conduct emphasised on protection and promotion of national integrity, Islamic Ideology and sovereignty of Islam in Pakistan. The code prohibited the parties from taking any action either with the use of words or symbolic representations which may likely be affecting the unanimity of Pakistan and its Islamic foundation. Consensus was developed that the manifestoes would be published by each of the political parties which should not be in contradiction to the ideology, solidarity and integrity of Pakistan, or to Islam. General Ziaul Haq also revealed his plan to the media that the political parties would be facilitated in the coverage of their election campaign through the radio and television.¹

General Ziaul Haq could have been sincere in his promise to hold elections within 90 days or he would have never given so much respect and facilities to the deposed Prime Minister Z. A. Bhutto. He was given full protocol while taking him to Murree on July 05, 1977.¹ During his meeting, General Ziaul Haq assured Z. A. Bhutto that the takeover was only for holding fresh elections. Z. A. Bhutto agreed and asked to be released which the military regime did.¹ However, Ziaul Haq got sceptical and alert when Z. A. Bhutto demonstrated his undiminished popularity and severely criticised the imposition of martial law. General Ziaul Haq foresaw the possibility of PPP's victory in the fresh elections. Moreover, keeping in view the criticism of Z. A. Bhutto about the military coup, his history of unkindness in dealing with opponents, and the provisions of 1973 Constitution for coup makers, General Ziaul Haq feared a retaliation of Z. A. Bhutto after his becoming prime minister again. General Ziaul Haq thought it inevitable of removing him from the political scene by taking legal charges against Bhutto's criminal abuse of power.¹ Some of the close aides in the political circle of General Ziaul Haq informed him that the grave is one and persons are two. It is either he himself or Z. A. Bhutto to go to bury into it. Therefore, General Ziaul Haq gave a second thought to his holding of the elections.

Nonetheless, the campaign for fresh general elections was going on, however, the political parties in PNA were struggling on candidature strategy. Noticing the internal rifts within PNA, the military regime wanted a postponement of the elections if the former so desired. Not only that, to further nail down the political leaders, the military regime initiated accountability by an inquiry into the assets of politicians with the purpose of intimidating and disqualifying them from contesting again. The PNA initiated an anti Z. A. Bhutto campaign which however, resulted in an increase in his popularity, rather than an expected decrease in his popularity among the masses. Z. A. Bhutto, a deposed leader of

a popular national party gained public sympathy for his persecution by a martial law regime whose motives were to eradicate PPP and eliminate Z. A. Bhutto. It also alarmed the senior opposition leaders that there are minimal chances of defeating the PPP of Z. A. Bhutto in the elections.¹ They knew the reality that they can't win adequate seats to form a government after the elections. To evade the possible defeat, the opposition supported accountability before the general elections which could possibly weaken the PPP and get them rid of Z. A. Bhutto.¹

Politicians from the opposition parties like NAP and JUI from Khyber Pakhtunkhwa (then NWFP) and Balochistan also extended their support to the process of accountability.¹ The support of these political parties was also based on malafide as their provincial governments were dismissed by the Z. A. Bhutto government.¹ In order to obtain their support, the military regime, after deposing Z. A. Bhutto had even dissolved the Hyderabad Tribunal and withdrew cases against leaders including Abdul Wali Khan, Khair Bakhsh Marri and Ghaus Bakhsh Bizenjo, and granted them amnesty. These leaders being part of the PNA also supported Z. A. Bhutto's trial for all his actions he had taken to prosecute the opposition.¹ Therefore, the factionalized PNA and the released politicians joined hands in urging General Ziaul Haq for seeking accountability of Z. A. Bhutto first and then hold the elections. They attempted to convince the General that first the accountability process should be initiated to weaken the leadership of PPP before holding the general elections. On September 28, 1977, many political leaders met the martial law authorities recommending them not to hold general elections before the completing the process of accountability.¹

Therefore, the military regime, in strategic interaction with the leadership of PNA, and with an institutional distaste for the elections, opted for the postponement of the elections and banned on all political activities on October 01, 1977.¹ The CMLA also imposed ban on political activities for eliminating all physical and mental strains from the country and allowing the passions to cool down.¹ Surprisingly, the ban on all political activities including those of PNA was unexpected. The PNA leadership vindictively, only wanted PPP to be banned. Moreover, in the post-ban period, the PNA failed to chalk out any unanimous strategy and therefore got disintegrated, for example, the decision of Muhammad Asghar Khan to withdraw from the alliance.

The decision for postponement of elections was taken just after fifteen days of the press meeting regarding the code of conduct for elections, and only 17 days before the general elections in a meeting of DMLAs and the Army Commanders.¹ General Ziaul Haq declared postponement of elections on the plea that it was intended to save the country from a debacle and complete the process of accountability to bring the reality before the people. He further claimed that political parties have yet to define their manifestos, and that there was a demand from the masses that accountability should be conducted before general elections. He announced that conduction of general elections under the current situation would lead to new crisis. General elections were postponed and the related task to target the opposition especially, the PPP through the process of accountability was initiated.¹

The military regime's preference converged within four months after assuming power. General Ziaul Haq did not fulfil the promise of holding fresh elections and started conducting accountability under the stewardship of existing judiciary, which was also under his influence. Thus, distracting the common people in the name of accountability, he managed to delay the elections. Moreover, accountability required sincerity and unluckily, he did not show sincerity to initiate the real accountability process. The intention of the military regime was only to delay the elections and eliminate PPP, therefore the accountability process was only a charade for the people to accept the existence of the military dictator. There was little action taken on the political rewards, maladministration, corruption and injustices prevalent in the military regime.¹ The parliamentarians including those in the Senate, National Assembly and Provincial Assemblies were bound to declare their assets. Some of the parliamentarians had to face an inquiry commission and were disqualified up to seven years. However, when general elections were delayed till 1985, this disqualification period became ineffective.¹

To create a ground and stimulate public opinion, the military regime issued four different white papers on the ill-performance of PPP government prior to the trial of Z. A. Bhutto. The martial law regime knew well that neither the rigging had been done on a large scale nor had the popularity of Z. A. Bhutto diminished. In fact, the basic objective of these papers was to downgrade the personality of Z. A. Bhutto to such an extent that there could be no resistance to his punishment.¹ It was reported in the papers that Z. A. Bhutto had misused the state institutions for personal and political gains. A committee was established by the martial law regime to investigate the charges of rigging in the 1977 Elections. The investigation committee accused Z. A. Bhutto of preparing a rigging plan during April 1976 with the title of 'A Model Election Plan,' which was commonly known as the 'Larkana Plan.' The accountability against PPP leadership continued even after the judicial execution of its leader, Z. A. Bhutto.¹

The hope of transferring power to civilians did not materialise because General Ziaul Haq was postponing the general elections time and again. As a result, he prolonged his martial law till 1985 when he lifted it on December 30, 1985.¹ His military rule continued as an Army Chief-cum-President till he died on 17 August 1988.¹ His hidden motives about future were disclosed gradually, which were contrary to the advices of his colleagues. Instead, to fulfil the promise of immediate transfer of power, he opted to prolong his personal rule for an indefinite period which increased public resentment against the martial law. Many of the pro-Ziaul Haq factions within the society gradually withdrew their support. They also joined hands with the anti-martial law elements, however, the martial law regime instead of holding general elections, preferred to conduct party-less local bodies elections in September 1979.¹ It was, in fact, planned to de-politicise the provinces and especially decrease the influence of political parties as a strategy to directly interact with the local level politicians who, in turn, could provide more support to the military regime.¹ The local government elections became priority of the government which were held on non-party basis in September 1979.

On the other hand, Pakistan as a state was gradually transformed into a theocracy with totalitarian political system. The religious measures introduced by General Ziaul Haq to alter every aspect of society in accordance with the norms of Islam were a direct response to the political crisis that provoked military intervention. General Ziaul Haq did realise the sentiments of the nation and sacrifices given for the movement of Tehrik-i-Nizam-i-Mustafa (Movement for the Prophetic System) which ultimately proved fatal for Z. A. Bhutto's government. Moreover, General Ziaul Haq had not only removed a civilian government, but was also the Chief of the force which had been humiliated by the defeat of 1971 war with India. The establishment of a theocratic state was an attempt for filling the political vacuum created because of the postponement of the promised election by General Ziaul Haq. The Islamisation process provided an opportunity for keeping the state power, which the martial law regime was unwilling to transfer to an elected government.

Thus, General Ziaul Haq sought rescue to Islamisation process within five months of the imposition of martial law.¹ General Ziaul Haq treated Islamisation to be helpful in earning legitimacy for his martial law regime. He declared in his address to the nation that 'our survival lies' in Islamic system, therefore, the Islamic laws would be enforced in the country as part of the Islamisation process.¹ It is significant to mention here that military courts were setup only five days after the promulgation of martial law.¹ Moreover, the harsh measures were taken before the Islamisation process for inducing terror such as hand amputation, public whipping and death sentences at the beginning of the Martial Law Regulations.¹ Later on, these actions were introduced as religious measures and as forms of punishment based on Shariah. However, as General Ziaul Haq used the Islamisation process as a tool for obtaining legitimacy for his military regime, the popular mandate was lacking in the 1984 referendum,¹ in which the low turnout also proved that the people were less enthusiastic for establishment of a theocratic state. It, however, had delayed the process of transferring power to the elected government.

General Ziaul Haq continued to work in accordance with his agenda of Islamisation process and therefore needed support from the orthodox Ulama along with those of Jamaat-i-Islami. These Ulama were also in need of such opportunity for increasing their influence with the backing of military regime. The religious political parties had never been successful to obtain more than 5% votes in the elections. Therefore, they had never been part of any elected government while this opportunity provided them a chance of partnership with the martial law regime without electoral gain. Therefore, General Ziaul Haq had been actively supported by these religious parties and groups, which helped him to further speed up the Islamization process. Making alliances with the like-minded political forces specifically the rightists, has been a regular practice of the martial law regimes. They have always created split among the political parties for the purpose to create a party of their own to help them in implementing their dictatorial agenda.

Even a powerful military dictator is forced to evade the resistance, obtain support of a section of the people generally known as illiterate and undisciplined. Nonetheless the mentioned compulsion of

the military regimes to obtain a mass support base has, in the ultimate analysis, paved the way for process of civilianisation of the martial law. In the case of General Ziaul Haq, his campaign for Islamisation process, the principal theme of his military regime had, however, not won him a support from all. The liberal section found it irrelevant in terms of the real problems in Pakistan and declared it a purposeful distraction of the people from the main issue of transfer of power. On the other side, the Jamat-i-Islami and other fundamentalist political parties had been complaining about the slow pace of enforcing Shariah.

However, still, the promotion of a Shariah System by General Ziaul Haq had won him the admiration of almost all the conservative people thus making it very difficult for the religious leaders to attack him directly. Nonetheless, the over emphasis on Islamisation process provided an opportunity to the religious orthodoxy to expand their power base. The religious groups providing support to the martial law regime in the imposition of Islamisation process became much empowered in promoting their ideology. The joining of hands by the military and religious circles affected the prospects of democracy in Pakistan. Collectively, their denouncement of the western style of democracy favoured strong and centralised authoritarian regime as imposition of Shariah. The presidential form presents a system of government that is closer to that of the Shariah. It resulted in division between the right wing religious groups backed by the martial law regime and the liberals.¹

4.4 Zulfikar Ali Bhutto's Trial and Execution

After the imposition of martial law, General Ziaul Haq blamed that Z. A. Bhutto that he was about to push the country into a civil war, therefore, the military had to intervene to check such prospects. The military regime also alleged that PPP was planning to provide weapons to the political activists.¹ The oppression of the leaders of PPP continued but to the surprise of common people, Z. A. Bhutto was neither charged for initiation of civil war, nor were any arms recovered from the possession of PPP activists.¹ Having dismissed the elected government, the military regime also kept the prime minister in protective custody for three weeks.¹ However, avoiding any resistance from the political parties especially the PPP, the martial law regime decided to release Z. A. Bhutto along with few other leaders of opposition in the last week of July 1977.¹

Later, the political parties were allowed for limited activities. Moreover, the martial law regime announced the elections to be held on 18th October 1977.¹ The following day, Z. A. Bhutto, while addressing the party workers in Islamabad, announced that he had no intention for challenging the martial law regime. Moreover, as the military regime had announced general elections to be held in October 1977, Z. A. Bhutto started campaign of his party. Although, there had been evidences of some irregularities in the March 1977 general elections, yet it was most likely that the PPP would still have secured a clear majority in October 1977 elections. Therefore, quite contrary to the expectations of martial law regime, Z. A. Bhutto started challenging the military regime with his emotional anti-regime

speeches, addresses and slogans during the October 1977 election campaign across major cities of Pakistan.

As Z. A. Bhutto had been given a hero's welcome by the people and with PPP's maiden vote, he thought it prudent to challenge the opposition and martial law regime electorally. Obviously, the popularity of Z. A. Bhutto among the masses was a clear threat to General Ziaul Haq. The martial law regime also knew that the major threat to their power comes from the deposed Prime Minister Z. A. Bhutto. Previously, he had been a key player to mobilise mass protests for toppling the military backed government of President (General) Ayub Khan in 1969. Besides this, he had also become the first non-Punjabi politician who created a mass political base in the province of Punjab. After his dismissal, there was still a revival in his popularity among the people which was critical for General Ziaul Haq's martial law. It was unlikely that Z. A. Bhutto would spare the life of General Ziaul Haq, if he returns to the office of Prime Minister again. The military junta was also frightened of Z. A. Bhutto's returning to power and the possible trail of the former for deposing the latter in an arbitrary fashion. After all, what he needed in this regard was simply invoking of the Constitution of 1973. Article 6 of the Constitution would be clearly, the basis for the charges of high treason, with a maximum penalty of death. These reasons were enough for the martial law regime to devise a strategy for the physical elimination of Z. A. Bhutto.¹

The martial law authorities had already established a special investigation cell to probe into the malpractices of the PPP while in power (1972-1977). Within one month of the promulgation of martial law, the Federal Investigation Agency (FIA) had submitted their inquiry reports on the murder case of a former parliamentarian (MNA), Dr. Nazir Ahmed. The FIA alleged on August 16, 1977 that Z. A. Bhutto was responsible for his murder.¹ Later, the FIA also filed further seven cases against Z. A. Bhutto,¹ five of which had been registered in a special court in first week of February 1978.¹ Beside these cases, the family of Nawab Muhammad Ahmad Khan, who was killed in 1974, and was father of Ahmad Raza Qasuri¹ had also opted to revive his murder case. Z. A. Bhutto had been accused of killing Nawab Muhammad Ahmed Khan. The hearing of this case was shifted to the Lahore High Court in August 1977.¹

Moreover, Z. A. Bhutto was also arrested in the first week of September 1977 and was charged with the murder of his political opponent.¹ The special public prosecutor had claimed that the state had got conclusive evidence of Z. A. Bhutto involvement in killing of the father of Ahmad Raza Qasuri.¹ However, Z. A. Bhutto could not be proved guilty and was only accused of conspiracy in this regard.¹ Therefore, just ten days after the arrest, he was granted bail by the Court on account of weak evidence.¹ Now Z. A. Bhutto decided to confront the martial law regime. Having calculated his popularity due to the huge gatherings of supporters, Z. A. Bhutto threatened General Ziaul Haq and his aides of dire consequence once he was voted to power. The military regime took his threats with seriousness and the effect was that in the mid of September 1977, Z. A. Bhutto was arrested again under a martial law order what proved to be the beginning of the end.¹

General Ziaul Haq had decided to use the Court for eliminating Z. A. Bhutto from political scene. The martial law regime abused the judicial process for his political persecution. Moreover, the manipulation of judges resulted in the victory for General Ziaul Haq because he was successful in obtaining a death sentence from the Court for Z. A. Bhutto. General Ziaul Haq understood Justice Mulvi Mushtaq Hussain was aggrieved having a grudge against Z. A. Bhutto. Therefore, he was appointed as acting Chief Justice of the Lahore High Court. While constituting the bench for the trial of Z. A. Bhutto, Ziaul Haq made a careful selection of the judges.¹ Z. A. Bhutto pleaded several times during the Court proceedings that Chief Justice Mulvi Mushtaq Hussain had a bias against him and therefore he would not be tried fairly. However, the martial law regime of General Ziaul Haq ignored all his pleas.¹ The Lahore High Court concluded in its 134-page unanimous judgment saying that the offenses which all the accused are charged with are thus proved to be genuine. Therefore, the Chief Justice of Lahore High Court declared conviction of the principal accused Z. A. Bhutto and the others and passed a death sentence for all five accused under questionable proceedings of the trial.¹ Z. A. Bhutto was charged for a political murder, was found guilty and was awarded death sentence through the unanimous judgment of Lahore High Court.¹

The remaining hurdle in the way of democracy was placed by the Supreme Court under another aggrieved Chief Justice and a reconstituted seven-member Bench, mainly comprised of the anti-PPP judges. The Supreme Court of Pakistan headed by the Chief Justice Anwarul Haq, after a lengthy judicial process, rejected the appeal of Z. A. Bhutto¹ and upheld the decision of Lahore High Court on February 6, 1979 through a split verdict of four to three.¹ Justice Dorab Patel, one of the dissenting judges admitted later in a statement that he was under pressure in hearing the appeal of Z. A. Bhutto. Chief Justice Anwarul Haq declared that the facts have proved beyond any doubt which showed that Z. A. Bhutto used the governmental institutions particularly the FSF for political persecutions. This was clearly a misuse of authority by the Prime Minister as instead to safeguard the life and liberty of the people, Z. A. Bhutto targeted his political opponents through the misuse of power of the FSF. Moreover, the Chief Justice observed that Ahmad Raza Qasuri was followed persistently in Islamabad and Lahore until finally his father became the victim of the conspiracy and the former escaped. Nonetheless, the powers of the prime minister were then used not to allow adequate measures of investigation and, afterwards, to pressurise Ahmad Raza Qasuri for re-joining the PPP.

Justice G. Safdar Shah, while giving a dissenting judgment, had concluded his view that the Director General of FSF, Masood Mahmood was not a reliable witness. Moreover, his certain statements were considered as hearsay and therefore were not admissible as evidence in the Court. Therefore, Justice G. Safdar Shah declared that he was convinced that the charges have not proved and the prosecution had also failed in proving existence of any criminal conspiracy between Z. A. Bhutto and Masood Mahmood. Therefore, disagreeing with majority, he concluded that the petition for his conviction should be set aside. Concluding his judgment, Justice Dorab Patel also disagreed with the majority opinion and

maintained that neither any conspiracy between Z. A. Bhutto and Masood Mahmood has been proven, nor could the evidence of Masood Mahmood be accepted because he has been an unreliable witness mainly, due to his doubtful position.

It is a fact that Z. A. Bhutto was not blameless as he had been using his position to subdue his political opponents. He came to power as the appointee of a martial law regime and his power came to an end at the hands of the next martial law regime. However, this is also a fact that the charges levelled against him in September 1977 were, no doubt, trumped up by the Ziaul Haq martial law regime and were based on tainted confessions of tortured prisoners.¹ Moreover, it is clear from the courts' proceedings that Z. A. Bhutto was judicially victimized. Chief Justice Mulvi Mushtaq Hussain was having a clear bias against Z. A. Bhutto. Therefore, he should have not headed the Bench of Lahore High Court which awarded death penalty to Z. A. Bhutto. Moreover, during the appeal proceedings in the Supreme Court, when Justice Qaiser Khan went on retirement, he should have been reappointed to continue as adhoc judge. Similarly, when Justice Waheed Uddin fell ill, despite his request, he was not allowed for hearing the proceedings of the case. The judgment was also in contradiction with the norms and precedents of the Supreme Court of Pakistan. When a member of the bench retires, dies or is incapacitated, the Chief Justice reconstitutes the bench so that the case could be heard with afresh proceedings. The judiciary worked under the pressure of the martial law regime and specifically for its own interests.¹

The countdown for the execution began on April 1, 1979 when General Ziaul Haq rejected the mercy petition and Z. A. Bhutto was finally hanged to death on 4 April 1979.¹ It was due to the derogatory statements issued against General Ziaul Haq that when Z. A. Bhutto's sister requested him to appeal for a mercy, his response was that he knew that General Ziaul Haq would never accept his mercy petition.¹ General Ziaul Haq had also assumed the Presidency when it was vacated by President Fazal Elahi Chaudhry¹ in September 1978.¹ Thus, by assuming office of the President of Pakistan by an incumbent Army Chief and CMLA, General Ziaul Haq had become soul decision maker and was able to grant mercy to Z. A. Bhutto. However, he did not decide the execution of Z. A. Bhutto and wanted that other institutions be involved sharing this burden with him. Therefore, Martial Law Administrators and cabinet ministers were involved in this decision. General Ziaul Haq also discussed decision of the Court in the meetings with his services chiefs and MLAs Conference in separate sittings. Both endorsed the decision of General Ziaul Haq to reject the mercy petitions. Afterwards, he sought the advice of the cabinet in which the PNA ministers were not ready to spare the life of Z. A. Bhutto.¹ General Ziaul Haq turned down all appeals for clemency of Z. A. Bhutto made by the international community.¹

All the arrangements of burial of Z. A. Bhutto were personally monitored by General Ziaul Haq. The political parties were providing him the backing in this regard. It is significant to mention here that after Z. A. Bhutto was executed, the cabinet was dismissed after two weeks.¹ It was meant to drop the ministers of PNA from his cabinet because General Ziaul Haq achieved his target. However, it

shows that General Ziaul Haq used hostility of PNA leaders towards Z. A. Bhutto as a source to provide the political support for his elimination.¹ It is noteworthy to mention here that the last promise of General Ziaul Haq for an election date decided as November 17, 1979¹ was declared a few days before the execution.¹ A new cabinet was sworn-in which included six generals (both retired and serving), a retired civil servant Ghulam Ishaq Khan and eight other civilians having no political affiliation. Besides, there were six advisors consisted of a retired Chief Justice of Pakistan, Justice Hamood-ur-Rehman, a retired foreign office expert, Agha Shahi, a lady and four other civilians.¹

After the execution of Z. A. Bhutto, the alliance between PNA and military regime came to an end. The military regime was no more in need of the factionalized PNA as the parties were disassociating with it. The parties in PNA had obtained their objective of removing Z. A. Bhutto from political scene. Therefore, they thought of gaining more benefits by contesting elections in the absence of Z. A. Bhutto instead of allying with the military regime. Now the expectations of PNA from General Ziaul Haq had fulfilled with the hanging of Z. A. Bhutto. Their position in the masses got strengthened in the light of the weakened PPP. Therefore, by giving resignations, they wanted to disassociate themselves from the martial law regime and turn to the voters. However, Mulana Mufti Mahmood repeated the commitments of the PNA that they will be supporting the martial law regime to implement the Islamic System.¹

Throughout the trial of Z. A. Bhutto, the hope for general elections had outwitted both the leadership of the PPP and the parties opposed to Z. A. Bhutto. When long as General Ziaul Haq had been publicly expressing his commitment to hold general elections, all the political parties had been careful not to antagonise him so much that he opts for cancellation of the elections. The strategy ensured that the political parties would not be able for jointly attempting and mobilising a mass movement for the demand of general elections and mercy for Z. A. Bhutto. The situation became worse for Z. A. Bhutto when the opposition called upon General Ziaul Haq to hang him.¹ Until the completion of trial and hanging of Z. A. Bhutto, General Ziaul Haq ridiculed the political leadership especially the PNA through keeping them in a vague situation. Moreover, the disillusionment of the PNA became clear when General Ziaul Haq cancelled the promised elections of November 1979 shortly after the hanging of Z. A. Bhutto and political parties were also banned.¹ Some of the PNA constituent parties joined the opposition group and finally joined hands with the PPP in launching a Movement for the Restoration of Democracy (MRD) a platform that was established in February 1981.¹

4.5 Banning the Political Activities and Partnership with Likeminded Civilians

Since the very beginning, General Ziaul Haq was not interested to hold the general elections. During the period from 1977 to 1983, the martial law government deceived and outwitted the opposition parties by stepping back of its commitment of conducting general elections. However, simultaneously the regime was taking steps to entrench itself and consolidate its powers. The martial law regime tightened its grip and the military presented

itself to be the guardian of the ideology of the state. The opposition political parties were countered with the uninterrupted use of power by martial law regime. It was successful in overcoming the risks involved in the efforts to eliminate Z. A. Bhutto from the scene. Similarly, the martial law regime faced little difficulty in controlling public protests for the restoration of democracy. In comparison to the coercive use of power by General Ziaul Haq, the people were powerful to some extent to resist these repressions, but were not powerful enough to face the toll. As a result, the martial law regime of General Ziaul Haq became more isolated than any other regime in the history of Pakistan; mainly due to the repressive military rule for eight years.

Although reluctant, General Ziaul Haq needed the support of the politicians in his governing the state. Therefore, he started manoeuvring to seek direct support of political leaders through their induction in the cabinet. One year after the promulgation of military rule, i.e., on July 5, 1978, General Ziaul Haq announced a twenty-two-member federal cabinet, which was consisted of politicians, technocrats and serving military officers. Moreover, a four-point objective of the new cabinet was declared.¹ This was the first step taken by General Ziaul Haq to give a civilian garb to martial law regime. Contrary to the expectations, the PNA which had earlier failed to resolve its differences over the postponement of elections with the martial law regime, also joined hands with the martial law regime in August 1978 for pursuing its political, if not economic, interests.¹ The PNA alliance had already been vanishing because Tehreek-e-Istaqlal had already left disbanded it in November 1977¹ and Jamiat Ulema-e-Pakistan left it in March 1978.¹ The Muslim League (Pagara group) was the first in joining the cabinet of Ziaul Haq. But the leaders of Jamat-i-Islami proved more enthusiastic partner, who even advised General Ziaul Haq that the political parties that had refused to join the cabinet should be banned.¹

There were two main reasons behind the PNA's joining the federal cabinet of the military regime. First, they aimed at taking credit for the imposition of Shariah. Second, they wanted an increase in their vote bank during the next general elections by utilising state power and apparatus. The political leaders wanted to enjoy independence in the political arena but it was lacking in the new arrangement. The state powers mostly rested with the military regime and, to some extent, with the civil bureaucracy. The President of PNA, Maulana Mufti Mahmood accused that the military regime had been exercising the real power while the ministers had not been taken into confidence by the higher bureaucracy and military officers on policy decisions of the state.¹

With Martial Law dragging into its third year, the PNA increased the resistance by questioning the postponement of elections. Therefore, the martial law regime struck an important change in the law by amending the 1962 Political Parties Act to further squeeze the political parties. In addition to this, Ziaul Haq also announced that elections to the local bodies will be held prior to the general elections in September 1979 on non-party basis.¹ The political parties were now required to

hold periodic intra-party elections and get themselves registered with the Election Commission of Pakistan. They were bound for submitting details of their assets to the Election Commission and to refrain from the activities which are contrary to the ideology of Pakistan, public order, independence of judiciary and integrity and honour of the armed forces. The Election Commission was authorised to reject the registration which, in turn, meant disqualification from contesting elections.¹

In response to the new condition of registration, a leader of PNA Mufti Mahmood announced that political parties within PNA and outside had a unified stand and none of the parties agreed with it.¹ The Jamat-i-Islami in its Central Committee meeting also raised concern about the biasness of the regime in the amendments to the Political Parties Act. Maulana Shah Ahmad Noorani also expressed his opposition to the amendment on the plea that the empowerment of Election Commission with judicial powers will produce negative effects.¹ Most of the parties and politicians declared that the new regulation about registration of political parties and submission of financial details in such a short period of time will be difficult. The result was obvious that only four political parties could get registration under this Act on November 11, 1979.¹ However, before the political parties could streamline their structure, the military regime decided on October 16, 1979, not to hold elections. The promised general elections were postponed for the second time and for an indefinite period; all political parties were dissolved; political activities were banned and the media was also suppressed.¹ General Ziaul Haq's order made it a matter of fundamental law that only those four parties registered with the Election Commission on October 11, 1979 would be permitted for political activities and contesting elections once the ban was lifted.

The Muslim League (Pagara group) and Jamaat-i-Islami along with other religious parties supporting General Ziaul Haq were allowed for political activities but in low profile. However, suppression of opposition parties especially that of the PPP continued and, later, Z. A. Bhutto family was also exiled.¹ Moreover, to contain the public resistance, the military courts were activated once again with indiscriminate and comprehensive powers. Given the exceptions from any judicial check, the arbitrary martial law was repressively used by General Ziaul Haq through the military courts as a conscious instrument of a policy for creating fear in the public. Moreover, the military courts were functioning with absolute power in a framework defined by a martial law order which had empowered the military regime for detaining any person who speaks or acts against the martial law regime.¹ Any political activity was declared to be punishable by rigorous imprisonment of seven years along with public flogging of twenty lashes.¹ The CMLA General Ziaul Haq had publicly expressed the need of coercive use of power and repression declaring that Martial Law should be based on fear.¹

The major aim of General Ziaul Haq was to crush all the opposition political forces so that they may not get together on a single platform against his military rule. State authority of martial rule was used in all possible ways to suppress political activities of the opponents. Any effort to form a coalition by the opposition political parties was crushed by the military regime. At the same time, media was not allowed for publishing the anti-martial law views of the politicians. Almost 200

journalists were arrested in March 1978 along with the closure of several newspapers. Such coercion and repression continued in the coming years with arrest and imprisonment of thousands of political activists in torture cells. All kinds of suppression like house arrest, travel restrictions, ban on political gatherings, and interaction and communication among the political leaders were circumscribed. The internal rift and organizational weaknesses within political parties further damaged their effectiveness which was further manipulated by the martial law regime to its own benefit. The result was that the opposition alliances which were formed during martial law regime were not able to rise for a longer period.

After the Provisional Constitution Order (PCO) was promulgated,¹ political activities were partially restored but with the permission of the President only. The PCO also diminished all the political parties except a few of the rightist religious political groups like Jamat-i-Islami. Moreover, it declared advocacy for any secular ideology or program as a crime. Nonetheless, the PCO also empowered General Ziaul Haq to insert amendments to the Constitution as per his preferences. The PCO declared the establishment of a Federal Council (Majlis-e-Shoora)¹ to be consisted of a group of people selected by the President by his order. The Shoora was to perform such functions as may be specified in the Order issued by the President of Pakistan. The said Advisory Body was to be consisted of 350 members and was to be drawn from the regular constituencies, with members from different occupational groups including the Ulama and ex-military persons. Those serving, the military regime insisted, would be chosen for their competence and integrity.¹ Thus, instead of holding general elections to the National and Provincial Assemblies, President General Ziaul Haq installed an Advisory Council known as Majlis-e-Shoora in December 1981.¹ General Ziaul Haq declared this step as an interim arrangement for bridging the gap between the masses and the martial law regime.¹

The main objective was to engage politicians who had conformity of opinion with the military regime of General Ziaul Haq in political matters. The religious political parties and other conservative platforms joined this nominated body being more beneficial forum. General Ziaul Haq tried to expand the representative base of this Advisory Council by nominating the members from different sections of society. The General nominated the Chairman as well as four vice-chairmen. The nominated members and the office bearers were to take oath of allegiance under the PCO of 1981.¹ Apparently, it looked like a step towards transfer of power by the military to the civilians. In actual practice, however, it was the consolidation of General Ziaul Haq's military rule through the establishment of a quasi-parliament to endorse the decisions of General Ziaul Haq. From nomination of the members to the appointment of the office bearers, the unilateral control of General Ziaul Haq was evident as the public were not involved at any stage.

Apparently, the presidential order vested lots of responsibilities in the Federal Council which included new legislation, suggestions for amendments to the existing laws, discussion and debates on annual budget, reviewing the five-year plan and/or any other assignment asked for by the President.¹ However, the practice showed otherwise situation and the Majlis-e-Shoora was not empowered for making or amending any law. The only power entrusted to its members was to debate public issues within certain limits. Its primary responsibility of law-making remained undoable only because it was an exclusive domain of the military commanders as the military regime wanted to have a firm grip over the polity.¹

It appears that General Ziaul Haq had been establishing the foundations for an Islamic System of government which had been advocated by Mulana Abul Ala Maududi in his scholastic writings and in which he advocates for the head of the state to be an Ameer (leader), being elected by the Muslims. Moreover, he says that there would also be an establishment of Majlis-e-Shoora for advisory functions, but the Ameer would not be bound to its advice.¹ The PCO of 1981 was a confirmation of the fact that before imposition of martial law, General Ziaul Haq had no concrete plan for Pakistan and when he decided to bring socio-economic and political changes; he had to switch over from a temporary 'guardian' to 'an autocratic ruler.' This also confirms that all this was an eyewash arrangement and, in fact, the real transfer of power did not occur in practical terms.

Although the martial law regime immediately implemented all the changes that could help in the consolidation of its already strong position, however, the regime delayed establishing the Advisory Body under the PCO.¹ General Ziaul Haq described the Advisory Body as an important step towards the process of democratisation and restoration of elected institutions. To him, this Advisory Council would not be any dictatorial body as his military regime wanted maximum participation of groups in the exercise of state authority. However, the disappointing aspect of his speech was his declaration that the martial law regime had concluded that despite their sincere and best efforts, elections would not be possible and expressed that elections have always given birth only to chaos and confusion in the country.¹ Nonetheless, the practical shape of this Advisory Council was not clear. However, General Ziaul Haq had clearly expressed his intentions for larger share for himself and the military commanders. Therefore, almost all major political parties in Pakistan rejected this Council even before its establishment and the MRD had called upon the United States to press upon General Ziaul Haq for holding general elections.¹

Instead of holding elections, General Ziaul Haq's use of some policy measures like accountability and later the Islamization process clearly proved that the major beneficiaries of his military regime were the religious political groups especially the Jamat-i-Islami. They availed the first ever opportunity in the post-independence Pakistan to become partners in the government. Therefore, they were the first to join the martial law regime of General Ziaul Haq. The General (1977 to 1988) had restricted the civil society, damaged participatory political processes, and misused the democratic norms and values. The political parties had endured the repressive military rule but their organisational

capabilities were weakened. The rule of military regime, although dealt harshly with the civil and religious freedoms, still it could not suppress the aspirations of the people for democratisation of Pakistan. Despite Zia's autocratic and dictatorial rule, tension prevailed over the struggle between pro-democracy and anti-democracy factions in the society. However, General Ziaul Haq was much skilful to encourage and expand the power base of religious and other right-wing political groups in the society.¹

4.6 Curtailing Powers of the Superior Judiciary and Institutional Restraints

The institution of higher judiciary in Pakistan came under trial during martial law regime of General Ziaul Haq. However, initially, there was 'a marriage of convenience' between the military regime and the higher judiciary. The martial law regime enjoyed the blessings of the higher judiciary. General Ziaul Haq did consultation with the Chief Justice of Pakistan on almost all important legal matters. Moreover, the military regime opted to secure the support of higher judiciary with the appointment of the Chief Justices of High Courts as Acting Governors of respective provinces as an incentive. The military regime, in turn, could obtain the certificate of validity from the judiciary. In addition to this, General Ziaul Haq was also successful in eliminating Z. A. Bhutto through the judicial process. General Ziaul Haq also started the practice of appointing acting Chief Justices of the High Courts because a temporary judge could easily be manipulated.

The result was that the favours and concessions granted by the judiciary did not encourage the CMLA General Ziaul Haq to undermine the institution of judiciary. The Chief Justice of Lahore High Court Maulvi Mushtaq Hussain, who had chaired the bench that sentenced Prime Minister Z. A. Bhutto to death, had been given a free hand to appoint the judges of his will. This authority was grossly misused by Justice Mushtaq Hussain as he was successful to get appointed two batches of nine judges, one in 1978 and another in 1979.¹ Moreover, General Ziaul Haq also promoted Justice S. A. Nusrat by appointing him in the Supreme Court who superseded many senior judges. He even did not spend five years in the High Court, as a requirement under the Constitution for such elevation.¹ Unfortunately, the serving as well as retired judges of the higher courts, having close relationship with General Ziaul Haq had been exercising powers and their influence, without any regard to the dignity or independence of the institution of judiciary.

However, the control of General Ziaul Haq and his authority had remained limited and was, on occasion, successfully challenged in the higher judiciary of Pakistan. Although, frequently intimidated, the judges of higher judiciary could find refuge in provisions of 1973 Constitution which had never been renounced by General Ziaul Haq's military regime. Later, the relationship of military regime with the judiciary could not provide help to the latter to strengthen itself. By choosing the judiciary to legitimize constitutionality of their martial rule, the military regime had to vest enormous powers of judicial review in the higher judiciary. In

the judgment of *Nusrat Bhutto vs Chief of the Army Staff and others* case, the Chief Justice of Pakistan, Justice Anwarul Haq declared that the high courts will continue with the power of judicial review for judging the validity of any action of military regime, if challenged in the light of the principles underlying the doctrine of State Necessity. Thus, the Court while giving validity to the military coup of 1977 under the law of necessity in November 1977 retained the power of judicial review, to decide the legality of martial law actions and rules, and issuing the writ of Habeas Corpus.¹

Judges of the superior courts took Justice Anwarul Haq in these provisions and started scrutinizing the actions of martial law regime, particularly the judgements of military courts.¹ As punitive acts of martial law authorities increased, the opponents of the regime turned to the courts to block detentions and reverse military court sentences. The higher judiciary was cautious and the judges did not touch the martial law regulations and orders in exercising judicial review. However, the High Courts did interfere with the decision of the military courts especially the detention cases under martial law regulations, when there was either no evidence or evidence of independent nature was missing.¹ The High Courts tried to regain their right to review actions of the military regime, although rulings were creative and careful.¹ However, they frequently quelled the detention orders of the military courts and also granted stay on sentences of flogging being issued to political prisoners.¹ As a result, the judicial structure, till 1979, protected citizens against arbitrary coercion by the martial law regime.

However, the optimism of judges proved wrong when measures were taken by martial law regime against the judiciary and their powers were taken away by measures adopted between 1979 and 1981. General Ziaul Haq tightened restrictions on the higher courts in 1979 through an amendment of Article 212-A to the Constitution. The power of judicial review was completely nullified which was reserved by the Supreme Court for the high courts in the judgment of *Begum Nusrat Bhutto Case*.¹ The Constitution (Second Amendment) Order of 1979 was issued by CMLA General Ziaul Haq for the establishment of a system of military courts to try offences under martial law which was parallel to the existing court structure of judiciary. Moreover, the martial law regime extended the jurisdiction of military tribunals at the expense of the higher judiciary barring them to review the actions of the military courts.¹ In other words, two types of powers of the higher judiciary, so essential for the protection of fundamental rights of citizens were eliminated. One, the power of higher judiciary to review the legality and constitutionality of executive decisions was restricted. Another, the higher judiciary was deprived of their power to protect the civil rights.

However, the High Courts were continuously entertaining petition against martial law and even challenged the validity of the amendments to the Constitution in the parameter of Supreme Court judgement in Begum Nusrat Bhutto's case. Martial Law regime further curbed the powers of High Courts when presidential order on May 27, 1980 restricted the "writ jurisdiction" of the High Courts granted under Article 199 of the 1973 Constitution.¹ It prohibited the Courts to issue any judgement in relation to the validity or efficacy of any martial law regulation or order of the military regime. The presidential order also barred the High Courts to review the judgments or sentences issued by military courts or tribunals. Nonetheless, the intriguing aspect of the order was to remove the jurisdiction of High Courts with retrospective effect.¹

This amendment was challenged in the Sindh and Balochistan High Courts. However, the Sindh High Court declared it valid by the majority opinion of the bench.¹ The Chief Justice of Balochistan High Court had already declared the trial of Z. A. Bhutto's Attorney General, Yahya Bakhtiar, as illegal and un-Islamic. In July 1980, the Balochistan High Court granted stay order on the execution of death sentences passed by a special military court.¹ The Court also declared that the High Courts could still decide cases that were to be filled to challenge decisions of military courts.¹ The same court further concluded that the amendments to Articles 212 and 199 of the Constitution¹ for curbing powers of the judiciary were illegal.¹ The Court held that these amendments were drastic and doing so was considered as outside the mandate of the martial law regime. Furthermore, it also declared that these amendments could not pass the test of efficacy as laid down in the judgment of Supreme Court in Begum Nusrat Bhutto's case. Indeed, the judgment of Supreme Court, while granting validity to the 1977 military coup based on the Doctrine of State Necessity, had emphasised on the conditional nature of the judicial endorsement of the military coup. In fact, martial law regime of General Ziaul Haq had promised that it will be ensuring a return of elected government on priority.¹

The military regime filed an appeal in the Supreme Court of Pakistan against Balochistan High Court's judgement. By early 1981, the pressure was mounting on the Supreme Court to use its powers granted under Article 199 of the Constitution and invalidate administrative and executive acts, and force the martial law regime to carry out actions which are legally required. The appeal of the military regime was also pending though it was very difficult for the Supreme Court of Pakistan to over-rule the findings of the Balochistan High Court. Besides, several constitutional petitions against General Ziaul Haq's

military regime were pending before the Supreme Court of Pakistan and the Chief Justice Anwarul Haq understood to have set them down for hearing. Moreover, the military regime also realized the anti-regime sentiments of the civil society and were expecting a review of the decision of Nusrat Bhutto Case. Nonetheless, General Ziaul Haq who had been known as a 'barbarian military tyrant' viewed the institution of judiciary as an instrument of the state meant to facilitate the execution of writ of the government rather than restricting its authority.¹ Therefore, without any prior notice, with one stroke, General Ziaul Haq extinguished judicial powers on March 24, 1981 by promulgating constitutional changes through a Provisional Constitution Order (PCO) 1981, in order to maintain the supremacy of the military regime.¹ Clearly, the judgments against martial law regime led to confrontation with the regime which the judiciary could not win; and the PCO 1981 was the victory proclamation of General Ziaul Haq.¹

The power of the superior judiciary to hear appeals against the decisions of military courts were curtailed declaring that any interference in detentions and other actions, and orders of the martial law regime including the amendment in 1973 Constitution could not be questioned in any court on any ground whatsoever.¹ The CMLA General Ziaul Haq was empowered to remove any difficulty, or to bring the provisions of PCO into effect, and to institute such provisions as he may consider necessary or expedient, including the appointment and dismissal of the judges of superior court. The PCO put a formal end to the necessity based regime as sanctioned by the Supreme Court in Begum Nusrat Bhutto's case. It had validated everything exercised by the martial law regime of General Ziaul Haq since the date of his taking control of power in July 1977. Thus, the PCO negating the independence of judiciary, also prolonged the military rule by nullifying the effect of the judgement in Nusrat Bhutto Case which had granted martial law regime of General Ziaul Haq a limited legal recognition. Unchallenged and such a massive scale interference in the composition, jurisdiction and independence of the higher judiciary had never been done in the past by any civilian or military regime in of Pakistan.¹

To punish and embarrass them further, judges of the higher judiciary were asked for taking a fresh oath to uphold the PCO which, in effect, had suspended the 1973 Constitution. Instead, the PCO had replaced the Constitution with a rigid code which restricted the powers of the superior courts. Any judge, taking the oath, had to bind himself for not questioning anything contained in the PCO 1981. Feeling that he had been badly used, Justice Anwarul Haq, the Chief Justice of Pakistan who chaired the bench that sentenced Z. A. Bhutto to

death, had showed unwillingness in taking a fresh oath. The refusal of Chief Justice of Pakistan and three other Supreme Court judges,¹ along with four provincial High Court judges including Chief Justice of Balochistan High Court, to take an oath of allegiance to the PCO resulted in their consequent dismissal.¹ The former Chief Justice of the Lahore High Court, Molvi Mushtaq Hussain (now SC judge), who had chaired the bench which sentenced Z. A. Bhutto to death, although willing for taking the oath was not invited. As a result, General Ziaul Haq had to fire a total of 19 Supreme Court and High Courts judges on March 25, 1981.¹ Thus, the judges of higher judiciary, some of whom had collaborated with General Ziaul Haq in granting legitimacy to his military coup and hanging of Z. A. Bhutto had ceased to hold their offices.

General Ziaul Haq, while sacking the superior courts judges, declared that the military regime wanted the judiciary to mind their own business and refrain from interference in anything else. He further said that although power is intoxicant, yet personally, he was not intoxicated with it. And that he intended to share power, but not with those who do not entitle themselves for it.¹ Indeed, the PCO had transformed the martial law regime into a martial state.¹ Justice A.R Cornelius, the former Chief Justice of Pakistan declared the unfortunate episode of PCO 1981 as “the rape of the judiciary.”¹ The PCO 1981 was a document that had few parallels in the world and which institutionalised the unfettered arbitrary power of a single person. Now General Ziaul Haq was at the helm of affairs, who tightened his grip on the levers of state power and apparatus with each passing day, and shared power and authority with a selected band of military high command only.¹

No doubt, General Ziaul Haq had not only restricted powers of the higher judiciary but had also arbitrarily removed the unwanted judges. However, he did not stop here and had also introduced fundamental structural changes in the institution of higher judiciary. These structural changes had too many detrimental effects on the independence of higher judiciary even after the lifting of martial law in December 1985. All the structural changes had been incorporated in the Constitution through the Revival of Constitution Order in 1985. Unfortunately, the parliament, being elected on non-party basis, also ratified, though under coercion, all the detrimental changes of martial law regime of General Ziaul Haq by passing the Eighth Constitutional Amendment. As a result, these outrageous measures became formidable blockades in the way of achieving independence of judiciary in Pakistan. In the post-Ziaul Haq period (1988 – onward), various civil governments have been abusing these provisions of the Constitution either to get rid of or to harass and punish the judges.

To underline his Islamisation process, General Ziaul Haq had added a new institution to the structure of judiciary, called the Federal Shariat Court (FSC) having constitutional powers.¹ It was empowered to review the laws in Pakistan to bring them in conformity with, and to declare any law invalid, if found repugnant to the principles of Islam. The status of the High Courts was reduced and subordinated to the Federal Shariat Court.¹ Moreover, the number of judges in Shariat Appellate Bench were increased from three to five by adding two ulema as adhoc judges to be appointed by the President.¹ The 1963 Press and Publication Order and the 1952 Security of Pakistan Act were reviewed by the Federal Shariat Court and were declared incompatible with the injunctions of Islam. Surprisingly, the military regime filed an appeal against the decision in the Supreme Court of Pakistan because the decision had threatened their political programs. In another case when procedures for stoning to death were declared by the Federal Shariat Court as contrary to Islamic law, the Chief Justice (Justice Salahuddin Ahmed) was terminated. The Federal Shariat Court was then reconstituted by appointing a new Chief Justice and three Ulama were included as its members by amending the Constitution. This reconstituted Court reviewed the judgment of Justice Salahuddin Ahmed and set it aside, and thus the military regime was successful to get the laws approved.

The establishment of FSC not only proved a lack of confidence by General Ziaul Haq on the judiciary, it had also undermined the constitutional position of the Chief Justice of Supreme Court. A superior court judge could be removed from service only through the procedure provided in Article 209 of the Constitution which declares in some unambiguous words that no judge shall be removed except as provided by this Article. However, General Ziaul Haq had inserted certain detrimental provisions in the Constitution which had allowed removal of the judges in otherwise manner. Now a High Court judge could be transferred to another High Court under Article 200 and could also be appointed as a judge of the FSC under Article 203-C. These Articles further provided that if a judge does not accept such transfer or appointment, he will cease to be a judge and deemed as retired.¹ Moreover, a judge of the FSC was to be appointed for a period of three years, extendable by the President of Pakistan and could be removed by the President anytime without providing any reason.¹ Therefore, the service of a judge of the FSC had been the most insecure.

Besides undermining the independence of judiciary by the military regime, some of the judges in superior judiciary were also a source of damage to the image of judiciary. The Chief Justices of the High Courts were appointed as acting Governors of the respective provinces in earlier days of martial

law. They wanted to import duty free Mercedes car each for their personal use. The federal law secretary raised objections because by accepting the position of Acting Governor, the Chief Justices did not cease to be judges and such imports are not included in their privileges. However, the martial law regime wanted to oblige the judiciary. Therefore, the CMLA referred the issue to Chief Justice Anwarul Haq. Instead of regretting such advice, the Chief Justice of Pakistan provided an opinion which entitled the government to go ahead with the plan.¹ The Chief Justice could not realise that his opinion was in violation of Article VIII of the Judicial Code of Conduct. Similarly, in 1986, plots had been allotted under a scheme to most of the judges of the Sindh High Court by the Chief Minister of Sindh, Ghaus Ali Shah. In an informal meeting, a judge asked the Chief Minister that the allotment of plots to the judges compromises the position of an independent judiciary. The reply of Chief Minister was that the interested judges had been pressing hard by in this regard.¹

Notes and References:

Chapter - V

MILITARY'S STRATEGY OF SHARING POWER WITH THE CIVILIANS

This chapter gives an overview as to how the civilian stakeholders vis-à-vis the military consolidated efforts to do away with the martial law regime in Pakistan. In other words, it focuses on how the martial law regime was pressurised to share their power with the civilians which the former did but with reluctance and a very slow pace. The chapter deals with the resistance launched by the MRD, the referendum of 1984 for Islamization program and legitimacy to Ziaul Haq as President of Pakistan, party less general elections of 1985, Revival of the Constitution Order (RCO), Eighth Constitutional Amendment ensuring protection to the actions taken by military, and the lifting of martial law constitute parts of this chapter. It also evaluates the quasi civilian set up under Muhammad Khan Junejo, its working relationship with the military especially in relation to Afghan policy, the causes of his removal as well as dissolution of the elected assemblies and the sudden death of General Ziaul Haq in August 1988. The announcement of fresh party based elections along with the role played by the Superior Courts in the restoration of democracy in Pakistan makes the concluding parts of the chapter.

5.1 Legitimacy Crises and the Controversial Referendum of 1984

General Ziaul Haq being an Army Chief knew little about the literature of different political theories and political practices which restricted his imagination about the democratic ideology. He was not in favour of the western democracy and political parties.¹ Therefore, he often expressed his disagreement with this system. Moreover, General Ziaul Haq declared it as unacceptable in Islam without considering the view of many moderate Ulema who had been in favour of democracy. He emphasised on an anti-democracy argument that if a majority takes a wrong decision; it would be turned down in favour of a right decision of the minority.¹ General Ziaul Haq himself believed in the presidential system as closer to the Islamic model of government and held that the parliamentary system of democracy was unsuited to the requirements of a state carved out on the ideology of Islam. General Ziaul Haq declared that there is no possibility of an early withdrawal to the third and longest martial law regime and that the military had come to stay in power.¹ On another occasion he had warned that he will neither leave the scene nor allow anyone else to rise to power.¹ Though, the military as an institution was not in favour of such claims, however, some of pro- Ziaul Haq sentiments were still lurking in the power corridors.

General Ziaul Haq took steps to prevent seasoned political leaders from electoral process through devising criteria of Islamic credentials for the candidates. Following Ayub Khan's Basic Democracies system, the local government elections at Union Council and District Councils were held thrice in his tenure, i.e. in December 1979, 1983 and then in 1987. When he consolidated his rule through the proclamation of the Provisional Constitution Order (PCO) in March 1981, it confirmed the

suspicion that he had planned to stay longer in power.¹ As discussed in chapter four, the PCO allowed limited political activities but only to those political parties that registered themselves with the Election Commission of Pakistan. Moreover, the PCO had empowered him to establish a nominated Federal Council in 1981 called Majlis-e-Shoora with 350 nominated members of the President's choice, were to perform functions as assigned by the President.¹

In fact, these steps were taken primarily for gaining some degree of legitimacy for his martial law regime. The Local Bodies System and the Federal Council also brought to the mainstream a new class of political leaders who actively supported General Ziaul Haq. Many of them eventually got elected to the National and Provincial Assemblies through the 1985 non-party elections. Thus, General Ziaul Haq had already built a political coalition that provided him support when the elected setup was restored. In this process, the major objective was to keep the main opposition out, consisting of the PPP and its likeminded smaller political parties.¹ However, introducing such institutions was not enough to meet the public demand for the restoration of democracy.

General Ziaul Haq wanted a group of politicians willing to lend support to his government and wholeheartedly collaborate in the implementation of his Islamization program. They were to work under him through such political system which could ensure a powerful position for him. The task to work-out such a system was given to the Council of Islamic Ideology (CII). The CII after a detailed work submitted its report to General Ziaul Haq in April 1982. Although this report was never made public, yet the media obtained the text of this report through their own sources and published it. Contrary to the will of the President, the CII had recommended a federal system, elected through party based elections, adult franchise and separate electorate. The CII was requested to reconsider the report which submitted a revised version after more than a year that accommodated the will of General Ziaul Haq for a unitary and presidential system. To Islamize the politics of Pakistan, the CII also suggested a Body of Scholars well versed in Islamic traditions with final authority to interpret the Islamic injunctions in the light of Qur'an and Sunnah.¹

General Ziaul Haq also formed a sixteen members Commission in July 1983 headed by Mulana Zafar Ahmed Ansari which was entrusted the task to chalk out fundamentals of a political system suited to the needs of the country. In fact, General Ziaul Haq was interested in a system with vast powers for himself as Army Chief and Head of the State. The recommendations of this Commission were close to what General Ziaul Haq had thought of the future political set up to be. It had proposed presidential system instead of parliamentary system with a head of the state to be elected by the central Majlis-e-Shoora and the provincial Majlis-e-Shoora who would also be the head of the government. It recommended proportional representation, separate electorate, restrictions on the powers of the parliament, pre-requisites for candidates to hold public offices, certain limitations on political participation of women, non-party elections and the establishment of more provinces. Though, this report had won the appreciation of General Ziaul Haq, it could not be incorporated into the RCO 1985.¹

General Ziaul Haq realised in the mid-1983 that though some extreme repressive measures including whipping the opponents had been taken, the Movement for the Restoration of Democracy (MRD) had not only survived but had become stronger. Therefore, the military regime, having met with strong protests and agitations, came up with an alternate strategy to reduce tension by appeasing the opposition thus reducing the political cost to its military rule. General Ziaul Haq announced that the power would be transferred to elected representatives before March 23, 1985 but did not announce any schedule for the elections. However, he revealed his plan which was not meant to transfer power but to 'share it' with the elected representatives to be elected through non-party elections. His civilian partners, religious political parties and groups, and members of the cabinet suggested to him to stay in power until the Islamisation process was completed. The elected councillors in the local bodies throughout Pakistan also passed resolutions and assured General Ziaul Haq of their support in the post elections period.¹

Due to an encouraging response from all the stakeholders, General Ziaul Haq had decided the civilianisation of rule without compromising on his political agenda. It was planned that General Ziaul Haq was to become the President prior to the parliamentary elections. Had the elections been held without this plan, it was presumed that the politicians would have gained political clout. An order had already been passed in April 1984 to amend the referendum laws.¹ Therefore, in a meeting held in first week of December 1984, General Ziaul Haq further revealed his intentions that he will be staying in power as President of Pakistan. It was announced that the President has decided to hold the referendum on December 19, 1984.¹ Thus, faced with the inevitability of a return to elected setup, the General chalked out a plan to make his position secure. He conducted referendum to seek public opinion on his Islamisation agenda. This, in fact, was meant to institutionalise his role in the civilian structure and maintain hold over the armed forces. However, his issuing of the Revival of Constitution 1973 Order (RCO) after the non-party elections and the subsequent steps revealed that he never intended to surrender power. The time which he had taken in announcement of his future was, in fact, meant to analyse the political trends and reactions of the politicians, the civil bureaucracy, local bodies' representatives and the public.

The main opposition to the idea of presidential referendum came from within the military. At a Corps Commanders' meeting, different military commanders conveyed to General Ziaul Haq the shame that many officers felt in wearing uniforms in public. It was mainly because the people had been associating the military with dictatorship and cruel interpretation of Islamic law of justice. Many of these military commanders had been sub-martial law administrators who had involved in dealing with the summary punishments granted by military courts, including the public flogging and lashing. General Ziaul Haq allowed these comments by military commanders to be aired but ignored them.¹ The referendum plan finally got approved in November 1984 from his cabinet. An Election Cell was established in the martial law secretariat and the Chief of General Staff, Lt. General Syed Rafaqat¹ was assigned responsibility to conduct this referendum.¹ It shows that the level of criticism from the military commanders to Ziaul Haq's plan of presidential referendum was very mild. However, the CMLA

seemed dependent on the army commanders for securing his position and gaining the strength. General Ziaul Haq might have never gone for that had he realised to be isolated by taking this decision.

General Ziaul Haq tried to get himself elected as President of Pakistan through a referendum held on 19th December 1984 in which the people were asked to cast their vote for the religion i.e., the Islamisation Policy. This referendum was the novelist mode of civilian arrangement for legitimizing the stay of General Ziaul Haq in power. When the referendum plan was announced, General Ziaul Haq suggested that if the masses said 'Yes' to his Islamization Policy, the military regime would consider it as an endorsement for his stay in power for the next five years, even though the referendum did not refer to this directly.¹ Obviously, General Ziaul Haq exploited the sentiments of the masses in ensuring Islamization process by asking a complex question, whether they wanted his Islamization program in the country or not, thus leaving them no choice but to mark yes on the ballot papers.¹ The question was carefully drafted for provoking the religious sentiments of the masses in favour of the personal ambitions of military dictator to stay in power.¹

The MRD had given a call to the people to boycott the referendum which was declared as a criminal offence to make such appeal. The opposition leaders were detained a week before the referendum and an independent check of the turnout was made impossible. The MRD had claimed that very low percentage of the people had casted votes and that the turnout was very low.¹ However, General Ziaul Haq while dismissing these claims declared that the people had given him mandate as the President of Pakistan for continuation of the Islamisation process in the country. The official claim of voters' turnout was 62.15% out of which 93% endorsed the question asked. The Daily Muslim reported only 10% turnout on December 19, 1984. The displeased military regime banned public circulation of the issue and lifted all its copies from the market as well as the newspaper office in Islamabad.¹

The referendum was the first step of General Ziaul Haq's policy measures in curbing the process of a genuine democracy in the country and maintaining his dictatorial military rule under the garb of an elected government in a republican country. General Ziaul Haq put himself in the office of the President, however, his decision to retain the position of Army Chief made it clear that he considered the military as his constituency for support and strength. Without the support of the military, he would have never been successful to stay in power for eleven years long period.

A compatibility can be seen in the three different martial laws in Pakistan. Ideologically, all the CMLA's did not want to allow democratisation because they would take them out of the corridors of power. The maximum flexibility shown was through a system of minimal power sharing arrangement with the politicians in which their supportive role was acceptable. General Ziaul Haq was no exception as he also showed his malafide tactics by announcing party-less elections scheduled for February 1985. However, prior to conducting elections, he had held a presidential referendum on December 19, 1984. It was devised to ensure his position as the President of Pakistan during the rule of next elected government. At the same time, he was also holding the position as Army Chief.

5.2 Non-party Elections of 1985 to Civilianize the Military Regime

General Ziaul Haq had broken his promises of holding elections several times for one reason or the other keeping in view the popularity graph of opposition parties. It dissatisfied some of his pro-military allies and frustrated other political groups. The military regime of General Ziaul Haq attempted to reverse the trend of general elections by delegitimizing the national level politics and encouraged Local Government elections.¹ The strategy of the military regime was devised for initiating and promoting new individuals as politicians and new groups into the mainstream politics. In addition, it also aimed to delegitimize the role and importance of seasoned politicians at national level particularly those parliamentarians who had affiliation with political parties. President General Ziaul Haq met limited success in this strategy; however, the process encouraged the emergence of local influential to the national politics.¹

The political associations in the country had remained largely fragmented during the initial years of martial law. In the post-postponement period of elections, the politicians particularly the members of PNA were successful in nominating the military junta as their rival mainly because General Ziaul Haq had left no stone unturned to depoliticise, factionalise and crush their physical existence along with their organisational structure. Moreover, under the Ziaul Haq government, the politicians were foreseeing little opportunity for their political growth. They had the only one choice to resolve their differences and take a united stand against the authoritarianism of military regime. A group of non-PNA politicians had already initiated political negotiations with the military victimised Pakistan Peoples Party (PPP). The PPP, in collaboration with like-minded political parties, had been successful in forming a multi-party alliance in February 1981, called as “Movement for the Restoration of Democracy (MRD).”¹

The politicians, having feudal background and mass support base coupled with urban professionals, formed the pro-democracy alliance; the MRD against General Ziaul Haq’s dictatorship. The MRD demanded for lifting of the military rule, revival of the 1973 Constitution and holding of elections in accordance with the suspended Constitution. A powerful campaign was started against General Ziaul Haq’s military rule by this movement particularly in Sindh. Every possible means was used by the government to crush the movement. The PPP and other political parties affiliated with the MRD were pressurised and their funds confiscated.¹ Also, the MRD was not able to exert more pressure because some of the mainstream political parties including Muslim League and Jamat-i-Islami did not join it. Though, effective in mobilising masses in certain parts of the country, it failed to force the military regime to restore democracy.

The MRD had also suffered with a severe setback due to the incident of high-jacking the plane of Pakistan International Airlines (PIA) on February 7, 1982 by Al-Zulfiqar Organization (AZO). It was a reactionary group under the patronage of Mir Murtaza Bhutto, the eldest son of Late Z. A. Bhutto, which had surfaced in the spirit of taking revenge from martial law regime. This organization

accepted the responsibility of hijacking PIA airplane on 2nd March 1981.¹ The PPP had negated to have any link with AZO. However, the martial law regime was successful in intensifying the campaign against the covert linkages between this organization and the PPP. As the negotiations with the hijackers of the plane were successful; the martial law regime agreed for releasing fifty-four activists of PPP from jails in Pakistan.¹ However, the killing of innocent passengers on the plane had created strong anti-AZO sentiments among the people. Moreover, the demand for releasing PPP activists also left a negative impact on the MRD. The main reason was that PPP was a major party in MRD, and AZO had been declared as branch of the former.

Re-emerging in 1983, the MRD was successful in exerting pressure on General Ziaul Haq for holding free and fair elections as the alliance announced to launch a campaign of agitation from August 14, 1983.¹ Although the MRD had failed to achieve strong support in provinces other than Sindh, yet it demonstrated the vulnerability of General Ziaul Haq military regime to political protest. Their demands had eventually paved the way for the restoration of democracy, later in 1985. After the announcement of MRD, General Ziaul Haq, in his address to a special session of Majlis-e-Shoora in August 1983, gave a detailed framework for induction of politicians into a civilian government.¹ The speech of General Ziaul Haq was advanced by two days to weaken the campaign of MRD. The elections for National and Provincial Assemblies were announced to be held in March 1985, after which martial law was to be lifted and the Constitution restored. The General-cum-President was to retain an effective hold over the power while sharing it with the politicians.¹

The plan instituted the appearance of a representative government. However, the MRD's demand for the general elections was not fully materialised because the elections were decided to be held on non-party basis. It was quite clear from such efforts that General Ziaul Haq himself would be holding the office of President after the elections. The plan of General Ziaul Haq evoked the politicians thus becoming conscious that if succeeded, this plan would strengthen military regime to stay for a longer period behind the shield of politicians. Therefore, organized by the MRD, protest movement was launched by the political parties to force General Ziaul Haq for transfer of power through free and fair general elections. The government not only put down the pressure but also imposed some restrictions on the press for curtailing the coverage of political activities. Addressing the information secretary, General Mujib-ur-Rehman in a meeting on May 7, 1984; General Ziaul Haq said that we are not imposing censorship, only press advice, so that the political temperature in the coming months does not become too hot.¹

Thus, declaring himself as President of Pakistan after the December 1984 referendum, the General successfully dealt with the assaults of MRD, and started working on the implementation of his power-sharing formula. No doubt, the experience, the military regime had gained from the local bodies' elections in 1979 and 1983 provided support in the National and Provincial Assemblies elections held in February 1985. The conduct of non-

party elections was legalized through constitutional amendment. Each candidate, as a precondition to the elections, had to rationalise his nomination with the support of fifty persons. Amendments in the Political Parties Act of 1962 had already dissolved the major political parties. The strategy was clearly aimed at not to allow the Pakistan Peoples Party to participate in the elections.¹ Thus a ban was imposed on the political parties along with major processions and demonstrations.¹ Under these restrictions, the election campaigns were carried out by individual candidates as if they were contesting a municipal, rather than national level elections. Due to the non-involvement of political parties, the speeches delivered in election campaign did not contain issues such as foreign policy, economy and demand for an end to martial law.

Some of the feudalistic and religious families having stakes in the military regime, had nominated their substitute candidates for elections. The pro Ziaul Haq political parties like Muslim League (Pagara) and Jamaat-i-Islami unofficially extended support to the candidates being loyal to their respective parties. General Ziaul Haq, in a meeting held on June 7, 1984 had decided that his government would certainly need a majority of those sitting Majlis-e-Shoora members in the upcoming National Assembly to support my policies. To achieve this, support was assured to the likeminded contestants of elections. He declared that there will be no rigging and no naked use of the administration in the elections.¹ To ensure the credibility of the national and provincial elections conducted by the military regime, General Ziaul Haq removed the restrictions which had barred the leaders of MRD from contesting the elections. However, the MRD decided to reject this offer mainly because this would provide a legitimacy to non-party elections.¹ In fact, this was what General Ziaul Haq wanted i.e., a boycott by the MRD and space created for himself to build a favourable political coalition.¹

After they had boycotted the referendum, MRD assumed that the people would also reject the non-party elections and therefore, announced a boycott of the 1985 elections. The martial law regime diluted the announcement of MRD for boycott of elections with the use of coercive and oppressive measures. Almost all the leaders of MRD were put under house arrest before the elections and hundreds of political workers were imprisoned. In a pre-elections crackdown by the government, hundreds of prominent political leaders were arrested. Moreover, campaign was also forbidden by a ban on political parties, including processions, rallies and even the use of loudspeakers.¹ The campaign for boycott of the elections was declared an offence against martial law regime that had to be tried by the

military courts. The military regime also imposed strong censorship on both the official media and private press. The press faced threats to be banned if they would publish any material supporting the stand of MRD to boycott the elections.¹

General Ziaul Haq, had announced his plan on January 12, 1985 in his presidential address that the government will be holding party-less elections for the national and provincial assemblies. Moreover, General Ziaul Haq had also defined the objectives of the said elections declaring that the main principles of the Islamic System include maximum welfare of the people i.e., socio-economic equality and a just administrative structure in the country. He further held that the elections would establish the will of the people for an Islamic political system.¹ However, General Ziaul Haq did not share details about the powers of the new Parliament and the Provincial Assemblies which were, later, curtailed. The elections to the National Assembly were held on 25th February 1985 and three days later i.e., on February 28, 1985 to the Provincial Assemblies. The opponent political parties had prepared a massive plan to disrupt the election. Many opposition leaders were arrested on the eve of elections.¹ However, initially scheduled for October 1977, the long-awaited promise of General Ziaul Haq could materialize in February 1985.

The MRD had miscalculated the response of the people to these elections. Both the military regime and the MRD had been expecting a low turnout in the elections mainly due to the boycott of MRD. Contrary to the expectations, the high turnout of voters was a surprise to all the stakeholders i.e., the military, the contesting candidates and the opposition mainly the MRD. The turnout was reported to be 52.9 percent throughout the country.¹ It had confirmed that, the people wanted restoration of democracy less caring about how fragile it was. The people knew a worse form of democracy would be better than the best dictatorship of the military. The main reason of such an impressive turnout had been the perception among people that the elections represented, although imperfectly, a decisive phase of transferring authority to an elected government. They knew that if successful, this electoral process would be leading towards the transfer of power to the elected representatives and the military would eventually return to their barracks. On the other side, for the military, the objectives of this exercise had been different. The military needed participation of the civilians to get rid of their isolation in the masses. Their strategy was that the National Assembly, elected on non-party basis, would be providing in institutional buffer thus absorbing a degree of political activities of the civilians.

The outcome of the elections gave a rebuff to the military regime, the opposition parties and particularly the religious political parties having extended their cooperation to the military ruler. Some of the seasoned politicians including former MNAs and MPAs, who had been popular, could not survive through these elections. Beside six cabinet ministers, a presidential adviser, two provincial ministers and three city mayors of local bodies suffered defeat. About half of the members of the nominated Majlis-e-Shoora (Federal Council) of martial law regime had also contested the elections, but only 44 of them could make it to the new National Assembly.¹ Almost, all the leadership of the Jamaat-i-Islami was defeated and the party won only 8 out of 63 contested National Assembly seats. Karachi, where Jamaat-i-Islami was traditionally enjoying a stronghold had also turned it down.¹ The National Assembly was having a mixed composition with many new faces due to the non-party elections. Most of these families were snubbed and sent home in the elections of 1970 and 1977 in which PPP had earned a sweeping victory.¹

General Ziaul Haq experienced his first setback to his political arrangements in the election of speaker to the National Assembly. He wanted Khawaja Mohammad Safdar, the former Speaker of his nominated Majlis-e-Shoora, to continue as an un-opposed Speaker of the newly elected National Assembly. Despite the best efforts of General Ziaul Haq, the National Assembly elected Syed Fakhar Imam as the speaker. However, General Ziaul Haq got Ghulam Ishaq Khan, the Finance Minister in his cabinet from 1978 to 1985, elected as Chairman of the Senate.¹ This also shows that although elected on non-party basis, the directly elected parliamentarians, unlike the indirectly elected Senator did not comply with the dictates of the military ruler. However, the new parliamentarians were ready to work under the patronage of General Ziaul Haq. Instead of showing interest in the national issues, the parliamentarians were more concerned with their personal benefits and privileges. They were having good feelings towards the military ruler because they were the beneficiaries of the system created by him. A positive aspect of this partial transfer of power to the elected representatives was that after eight years of martial law, the newly elected National Assembly ultimately replaced the nominated Majlis-e-Shoora.¹ Moreover, as soon as the 1985 non-party elections produced an elected National Assembly and restored the democratic process, the elected members and mainly the cabinet of Prime Minister Muhammad Khan Junejo started working for the supremacy of the parliament with a new zeal.

5.3 Constitutional Cover through Amendments in the Constitution

Like General Ayub Khan, General Ziaul Haq also sought constitutional protection before civilianising his military regime. Once the referendum was held in December 1984, General Ziaul Haq was ready for sharing of power with the condition that the civilian government would carry on his Islamisation program. Therefore, he held non-party elections for National and Provincial Assemblies in February 1985. A significant development in the post elections scenario was the incorporation of 56 amendments into the 1973 Constitution in the first week of March 1985 to remove doubts about the supremacy of military and his

stay at the helm of affairs.¹ In fact, a list of these changes was presented before the cabinet by General Ziaul Haq in a meeting held on February 12, 1985 to be incorporated in a presidential order after the elections along with the order for restoration of the Constitution.¹

Thus, before the members of newly elected National Assembly were to take oath of their membership in the first session, General Ziaul Haq, the then President cum CMLA had prepared a package of constitutional changes titled: Revival of Constitution Order (RCO) 1985. These changes were to be discussed in the parliament in the subsequent days. Under this Order, the 1973 Constitution was restored but with sweeping changes creating a significant imbalance in the powers of President and the Premier. The sweeping powers assigned to the president included selection of the prime minister, provincial governor and services chiefs.¹ The fundamental constitutional changes embarrassed the elected representative in the National Assembly. The changes introduced were without any consultation with, or ratification by the parliament.¹ The promulgation of RCO 1985 revealed the credibility of the elected parliament in the eyes of General Ziaul Haq. Instead of placing the amendments before the National Assembly, the constitutional amendments were introduced through a martial law order. The 8th Amendment Bill was passed six months later by the National Assembly and the Senate to validate these changes.¹

The declaration of RCO 1985 was a strategy for institutionalising the military regime's rules of the game. The 8th Amendment provided constitutional protection to martial law orders, actions and the decisions of the military courts. Thus, the actions of the martial law regime taken since 1977 were declared to be legal and valid. An amendment was inserted whereby the National Assembly was not empowered for repealing or amending any of the martial law orders without the approval of President General Ziaul Haq. Besides constraining the powers of the National Assembly, some safeguards were also introduced in case it would exercise its powers beyond these limits. President General Ziaul Haq had been granted the power under 58(2)(b) to dissolve the parliament without the consent of the prime minister. Though, the President was not empowered to veto bills passed by the parliament, he could delay a bill for 45 days. The RCO, among other controversial changes, also provided for a mix of presidential-cum-parliamentary form of government. The President was to enjoy discretionary powers in this parliamentary system at the federal level and in the provinces through powerful governors. Discretionary powers were granted to the President to appoint judges of the High Courts, Supreme Court and the Federal Shariat Court coupled with the power to appoint provincial governors and chiefs of the armed forces.¹

It also gave a decisive position to the President having overriding powers and reducing the practical position of prime minister almost to a senior minister. The prime minister was bound to communicate to the President of Pakistan the information about all the cabinet decisions that are related to the governing of the Federation. The President of Pakistan was required to be working on the advice of the premier in some cases, however, he was also empowered to ask the government for revision of the advice. The President was given the power to dismiss the cabinet and dissolve the National and Provincial Assemblies, either on the advice of the premier, or without that but in two different situations. According to the first situation, if none of the parties could exercise majority in the National Assembly and government was defeated through a no-confidence motion. In second situation, the President of Pakistan was empowered to dissolve the National Assembly and Provincial Assemblies through Governor if he thought that a situation had arisen where the government could no longer function in accordance with the 1973 Constitution and a fresh mandate from the masses was required. In other words, the premier had to hold his office during the pleasure of the President of Pakistan. Later, this Article 58(2)(b) became the reason for dismissal of four National Assemblies one after another since May 1988 till 1996.¹

Thus, under the new rules of Pakistani polity, the president under his discretionary powers had to nominate the Prime Minister. After ensuring safeguards, General Ziaul Haq nominated Muhammad Khan Junejo,¹ as a premier with a recommendation of Pir Pagara.¹ Muhammad Khan Junejo was expected by General Ziaul Haq to be a supportive politician and will never create resistance to the military regime. The new rules of the polity also empowered the provincial governors (who were the serving army generals), to appoint the chief ministers in the respective provinces. Because of the judiciary's strategic interaction with the military regime, a serving judge of the Sindh High Court was successful in getting himself appointed as Chief Minister of Sindh. Nawaz Sharif, an industrialist, was successful to strategically ally with the military ruler and assume the office of Chief Minister in Punjab.

Although the National Assembly had started working with the new elected government in office, yet martial law remained operational. Contrary to the calculations of the military, the politicians especially the Premier Muhammad Khan Junejo had a different opinion from that of the military about the continuation of martial law. He desired to increase his political interests, if not economic and had started politically manoeuvring with politicians whose position in the National Assembly was weak due to the absence of organised and effective political parties. The efforts of prime minister bore fruit as he was subsequently elected as President of Muslim League. Despite his dislike of political parties, General Ziaul Haq had to agree to provide the umbrella of a political platform as the parliamentary system looked handicapped without the support of a party.

Prime Minister Muhammad Khan Junejo was in favour of open political activities so that his party, the Muslim League could strengthen its support base. When President General Ziaul Haq noticed the potential of shirking in the civilian partner of the coalition, he decided to strike a deal. He offered a choice to the politicians, either to go along with the newly devised rules of business for getting the

martial law lifted, or agree with the status quo. The politicians, on the other hand, calculated that they would gain more political benefits in case the martial law was lifted. General Ziaul Haq had made numerous constitutional amendments during the period before 1985 elections through various Constitutional Amendment Orders. Therefore, he wanted ratification of two most significant legislations before lifting the martial law.¹ The RCO 1985 was submitted to the parliament in the form of Eight Amendment Bill to be ratified by both the assemblies. Another legislation which General Ziaul Haq wanted to be ratified was the changes introduced in the Political Parties Act 1962. The rules of 1979, which had bound political parties to get themselves registered with the Election Commission of Pakistan, were submitted to the parliament to be ratified as Political Parties Act in 1985. These amendments also introduced a penalty of disqualification for an elected politician who would join an unregistered political party. General Ziaul Haq had feared the leftist political parties and, therefore, made efforts for strengthening his control over the polity prior to lifting of martial law.

The RCO was discussed in two Houses of the parliament and was adopted with certain changes as Eighth Amendment to the 1973 Constitution unanimously on October 17, 1985.¹ The original RCO empowered the president to appoint a prime minister of his own choice. However, in accordance with the agreement that reached, the Parliament decided that the President of Pakistan would exercise this power till March 1990. Such powers were also granted to the provincial assemblies for electing the chief ministers from March 1988 onwards. Under the Eighth Amendment, validity was granted to all actions including the takeover of July 5, 1977, ordinances and regulations of martial law (even if they had violated the fundamental rights), the decisions of military courts, hence indemnifying the doers of all these actions from court action.¹ General Ziaul Haq could stay in the Presidency for the next five years and continue to hold the office of the Army Chief. The only concession given to the National Assembly by the General was not to exercise the power of a veto of legislation, but to delay a bill for signature for 45 days. Moreover, the President had obtained the power to dissolve the parliament and provincial assemblies whenever he deemed necessary. His handpicked premier Mohammad Khan Junejo had a ceremonial control over the functioning of the elected government. This is because most of the powers had transferred to General Ziaul Haq, who held two positions: The President and the Army Chief.

The imbalance of power enabled the president to dismiss the civil government either on his own will or in conjunction with other centres of power in Pakistan. In fact, the Eighth Constitutional Amendment had empowered the military ruler to use presidential powers for retaining its preeminent position within the political system of Pakistan. Whenever the military perceived the policies of a civil government as contrary to their interests, the latter was toppled through the president under the 58(2)(b). During the period from 1985 to 1988, the Eighth Amendment had created an imbalance in the parliamentary system of Pakistan. The power of the President of Pakistan to dissolve the National Assembly had been like a hanging sword to the neck of the civil government. The elected governments were struck down under 58(2)(b) four times i.e., President Ziaul Haq in 1988, President Ghulam Ishaq Khan in 1990 and 1993, and President Farooq Ahmad Khan Leghari in 1996.

Beside other constitutional changes, General Ziaul Haq also tried to establish a permanent role for military in the power structure. In fact, he never felt shy in publicly expressing this desire since 1977 onwards. He had proposed a National Security Council (NSC) under the RCO 1985 as an advisory body.¹ It was to be consisted of the President, the Prime Minister, the Chairman Senate and the chief ministers of the four provinces. Members from military side were the Chairman, Joint Chiefs of Staff Committee (JCSC) and the services chiefs of the armed forces.¹ The imposition of military rule in 1977 had been welcomed by a vast section of the society. However, when the military regime prolonged its stay in power, the people started expressing resentment. Therefore, the people of Pakistan strongly resisted any effort to institutionalise the role of military in the national politics. While seeking approval for NSC from the parliament in 1985 through Eighth Amendment, General Ziaul Haq also realized this fact. He lamented that the masses had a misperception about NSC thus suspecting it for a powerful position vis-à-vis the parliament and the elected government. To Ziaul Haq, it would provide a platform for the military and will not encroach upon the domains of either the Parliament or the Cabinet.¹ However, the NSC could not be approved in the Eighth Amendment after a lengthy discussion in both Houses of Parliament.

A negation to the NSC proved that even a legislature which was generally perceived low profiled and a rubber stamp, could block a permanent role for the military in the political system of Pakistan. Contrary to the existing theoretical literature, the politicians had been able to deal with the military regime tactfully to secure their long-term interests. In this regard, the politicians were, on the one hand, successful in getting the martial law lifted and, on the other, they did not agree with the idea of the NSC which, they feared, would bring them to a subservient level. In fact, the NSC had been brought forward by the military to oversee the civilian government. It is to be noted that Martial Law remained operational while the parliament was discussing the Eighth Amendment. It was lifted later December 30, 1985, two and half months after the National Assembly and Senate had approved the Eighth Amendment minus NSC.¹ The Fundamental Rights (Articles 8-28) also remained suspended till the lifting of martial law. From a theoretical perspective, the incorporation of Article 58(2)(b) contextually suited General Ziaul Haq as President of Pakistan and importantly as head of the military regime. However, the parliament courageously resisted to a constitutional role for the military in the politics of Pakistan since the military intervention was, as has been so far explained, the result of military exigency and rationality.

Although General Ziaul Haq could grab sweeping powers under the Eight Amendment, yet he couldn't resist the demand of elected assembly to lift martial law and restore the 1973 Constitution. Therefore, when General Ziaul Haq secured constitutional safeguards for his eight years of military regime (1977-85) and also got his position as an elected President legalized for the next five years as a patron of the elected government, he finally lifted the martial law.¹ Prime Minister Muhammad Khan Junejo declared on the very next day of the lifting of martial law that his government would be providing opportunities to the political parties for organising their structure and developing contacts with the people for preparations to the next elections.¹ Obviously, by this he meant that the political

parties shall be restored to ensure party based elections, something contrary to the vision of General Ziaul Haq on Pakistan's party politics.

Furthermore, the contributions of Prime Minister Muhammad Khan Junejo in getting the emergency lifted and the fundamental rights restored in a military regime were valuable for the future of democracy. The real test of General Ziaul Haq's new liberalisation came when anti-government demonstration started across the country in the beginning of 1986, the year that marked the fifty-eighth birthday anniversary of Z. A. Bhutto.¹ General Ziaul Haq, still in military uniform, kept the troops in barracks and allowed the protestors who were denouncing him as well as his military rule. Despite the apparent changes in the polity, many in the opposition parties held the view that General Ziaul Haq was still having a firm control on the system and could exercise his power to re-impose martial law anytime. Benazir Bhutto termed the new changes in the power structure as cunning camouflage which were instituted for convincing the Western Powers, especially the US that a democracy process and restoration of fundamental rights have been initiated in Pakistan.¹

5.4 Working Relationship between the Elected Government and the Military

The party-less elections in 1985 and the civilianization of the military rule by President General Ziaul Haq gave rise to an optimism that a democratic government would gradually be installed in Pakistan. The people hoped that General Ziaul Haq's power sharing mechanism would grow into fuller and wider process of democratization with more public participation. This could have provided him an honourable way to get himself out of the political dilemma. However, a contradiction could be seen in the institutional structure of parliamentary form of government established in 1985. The powers that the martial law regime was willing to share with the parliament made its position weak. The large turnout of the voters was a popular mandate to end the rule of military regime. The process of democratization brought in its wake a continuous pressure on the parliament for demonstrating a degree of independence vis-à-vis the position of General Ziaul Haq. Moreover, it was also expected that practical steps would be initiated towards a complete transfer of authority to the elected government. On the other hand, from the military perspective, the new power structure was an arrangement requiring very sensitive handling if it was to deliver. However, the politicians were fearing that it could become a base for prolonging control of the military in Pakistan for an indefinite period.

After the transfer of power to civilians, the relations between civil government and the military got cordial in the beginning but started souring day by day and ultimately resulted in tensions because of differences on important issues. The RCO empowered the President to emerge as a supreme authority because his holding the position of the Army Chief, and the elected prime minister looked in

a subordinate position. General Ziaul Haq had wanted to build an Islamic State and rule it as Amir-ul-Momineen for a life time. Therefore, he had introduced Islamic conjunctions mostly with his own interpretations and renamed the Parliament as Majlis-e-Shoora.¹ General Ziaul Haq also wanted to maintain an absolute control over all the governmental affairs with unconditional support of a non-assertive prime minister. Muhammad Khan Junejo, being a less prominent politician from Sindh was a better choice to give a practical shape to the future designs of General Ziaul Haq. Initially, three names for Prime Minister were proposed but Ziaul Haq decided to appoint Muhammad Khan Junejo as Prime Minister.¹ Other two names under consideration had been Ilahi Bakhsh Soomro from Sindh and Zafarullah Khan Jamali from Balochistan. The nomination of Muhammad Khan Junejo was finalised on the recommendation of Pir Sahib Pagara.¹

In his first meeting, General Ziaul Haq received Muhammad Khan Junejo warmly in President House on March 20, 1985 and informed him about the decision of nominating him as the Prime Minister of Pakistan. However, it is said that a grim-faced Muhammad Khan Junejo, after hearing the news did not become jubilant to thank the President and, instead immediately asked that when will he be removing the martial law. No doubt, it was a shocking response for General Ziaul Haq because he had expected a thankful person in response to this appointment. However, General Ziaul Haq, trying to retrieve the discussion said that now martial law would be supporting the elected government, but kept this aspect of Muhammad Khan Junejo in mind. After General Ziaul Haq proposed the name of Muhammad Khan Junejo for Prime Minister, the party-less assembly formally approved his appointment by extending the vote of confidence and he took oath of his office on 23 March 1985.¹

The position of Muhammad Khan Junejo was quite weak due to the constitutional amendments introduced by General Ziaul Haq through RCO to strengthen his own position as President. But Muhammad Khan Junejo promised to get the martial law lifted at the earliest and fully restore the 1973 Constitution.¹ Muhammad Khan Junejo had taken eighteen days for selecting ministers for his new cabinet after prolonged consultations with President General Ziaul Haq.¹ He, as a Prime Minister, asserted his authority and refused to accept all the nominations of General Ziaul Haq for the cabinet ministries by dropping few names from the list. However, General Ziaul Haq had been sensitive about defence and foreign policy, therefore the name of Sahibzada Yaqoob Khan was strongly proposed for continuation as foreign minister. Therefore, accepting most of the nomination, he also appointed Sahibzada Yaqoob Khan¹ as Foreign Minister and Dr. Mahbub-ul-Haq¹ as Minister for Planning and Development and, later, as Finance Minister. The prime minister showed resistance in inducting many personnel with military background in the cabinet and the name of Lt. General Mujib-ur-Rehman¹ was dropped. The approach of Prime Minister was also different regarding the appointment of ambassadors, federal secretaries and heads of the intelligence agencies. The removal of Major General Nek Muhammad is an example in this regard.¹

The governmental affairs had been, in a way, distributed between the military and the elected government. Matters related to the defence and foreign affairs were marked solely as the domains of

military. However, finance and establishment were to be dealt with jointly by civil government and the military. Moreover, all the remaining matters were to be managed by the civilian partners of the military regime. Sahibzada Yaqoob Khan had full control of the foreign policy making, however, he was removed later by Muhammad Khan Junejo and assumed the portfolio himself.¹ General Ziaul Haq lost control over the foreign affairs which perturbed him and ultimately contributed to the decision against his government. In fact, the day Muhammad Khan Junejo assumed power, his struggle for powers and separate identity from the president had begun. However, he also wanted to get a smooth sailing with the President so that his position remains intact. However, it was difficult for an authoritarian President who enjoyed dictatorial powers during military regime to share complete power. General Ziaul Haq had been in the habit of directly dealing with all the state affairs. However, he, under the new arrangement, had to deal the state affairs through an elected prime minister which he could not digest. Therefore, the president took it seriously and made up his mind to dismantle the elected setup.¹

Although, elections to the National Assembly were held based on non-party elections, yet General Ziaul Haq had to subsequently encourage the elected representatives to join under one umbrella. In mid of 1985, the Group had been joined by more than two-third members of the National Assembly. The Political Parties Act was amended by the National Assembly thus paving the ground for Mohammad Khan Junejo to announce revival of Muslim League as an official political party.¹ Mohammad Khan Junejo assumed leadership of the said party. Since these arrangements were made in reverse order of the traditional pattern of politics, therefore, the manifesto came last. Keeping in view the new arrangements, it might be concluded that the political structure that General Ziaul Haq had preferred and the civilian set up that he put in place under the Prime Minister Mohammad Khan Junejo was expected to be functioning around General Ziaul Haq's personality and his office as the President. Soon after consolidating his position in both houses of the parliament, Muhammad Khan Junejo along with most of his colleagues in the Muslim League, started taking steps quite independently bypassing General Ziaul Haq.

Both Muhammad Khan Junejo and General Ziaul Haq were completely different in temperament and political style. Their personal ambitions and perceptions about their roles in the new institutional structure and political arrangements widely diverged. The fundamental problem which they faced was how to share power and how to mediate their conflict of interests. The Eighth Constitutional Amendment had provided a framework for the orderly working of the power-sharing arrangements. However, the anomaly of the president retaining the office of Army Chief along with his strong connections with some powerful lobbies and various political groups, restricted smooth functioning of the newly elected setup and thus posed a constant threat of deviation from the new rules. On the other hand, Muhammad Khan Junejo had built his image as one who was instrumental in lifting of the martial law; therefore, he also started asserting his constitutional powers and prerogatives as Prime Minister of Pakistan.

Under the new setup, a quasi-civilian government was established that had created a diffused political environment in the country. A direct confrontation between the military backed government and the opposition did no longer exist. It was because several sections of the political elite had been cooperating with the military regime and had also developed a stake in the new political arrangement. As a result, there emerged a certain flexibility of mutual accommodations and political arrangements. Muhammad Khan Junejo as an elected Prime Minister emerged as a good channel in the new power structure for those who had been finding it difficult to ally themselves publicly with the military ruler. Despite various issues and difficulties, the elected government acted as an effective buffer, thus providing a cover to the military to face direct confrontation with the opposition political parties. In fact, the military was enjoying in both situations, to retain an effective power and deflect failures to the elected institutions.

Despite sharing power by the military regime, the elected government was not independent in its conduction of governmental affairs. The main reason was that the country was ruled through martial law orders and the RCO for the first nine months of the installation of the civilian setup. Another factor was that a powerful President was reluctant to share his powers in the real sense. Therefore, he was successful in institutionalising the presidential control over the office of the prime minister. Due to the Constitutional Amendments, it was difficult for the prime minister to exercise his authority independently. However, Muhammad Khan Junejo asserted with a public announcement in Lahore on August 14, 1985 that democracy and martial law could not work side by side and that martial law must be lifted before the end of 1985.¹ General Ziaul Haq also demanded for an indemnity bill under the umbrella of the Constitution to give protection to all his good or bad actions taken after the capturing of power. The Eighth Constitutional Amendment was passed by the National Assembly on 17 October 1985 and by Senate in November 1985 thus providing constitutional protection to all the laws passed during martial law including the RCO of March 1985.¹

Mohammed Khan Junejo allowed an open political environment in which opposition could function more openly. He also showed democratic dispensation by allowing PPP Co-chairperson Benazir Bhutto's return to Pakistan. At the same time, Muhammad Khan Junejo demonstrated courage in establishing the dominance of Muslim League over the polity. He initiated a program for releasing developmental funds to the parliamentarians especially those of his own party to be utilized in their constituencies for development and welfare purposes.¹ Muhammad Khan Junejo had created a

framework for good working relation between the government and the opposition something for which he has not been given the credit that he deserved. He is the one who, among the politicians, stands out as a premier who demonstrated tolerance towards the opposition, showed respect for the rule of law, and promoted the freedom of media and, above all, developed space for consensus building on national issues.¹ However, before he could stabilize the rule of elected representatives and the processes for civilian institution building, his government was dismissed with assemblies dissolved.

Mohammad Khan Junejo retained the portfolio of the Ministry of Defence, and as such made General Ziaul Haq answerable to him. On the other hand, Muhammad Khan Junejo being Prime Minister was answerable to General Ziaul Haq as President of the Republic. Therefore, it was an ambiguous arrangement.¹ It is quite surprising that Muhammad Khan Junejo signed off on the extension of General Ziaul Haq as Army Chief. He effectively exercised his executive power in the retirement and promotion of military high command. No doubt, General Ziaul Haq resented this interference in his power sphere. Moreover, General Ziaul Haq was not happy with the removal of his men from cabinet posts and posting and transfer of the ambassadors by the prime minister without taking him into confidence. But the real difference that led to parting of the ways had occurred on two major issues. First was when Mohammad Khan Junejo called for the All Parties Conference to create a national consensus on the issue of Afghan settlement.¹ All political leaders of national standing including Benazir Bhutto participated in the conference. General Ziaul Haq was neither consulted nor invited to the conference. Moreover, the common cry in the deliberations was that everyone was talking about how to “get rid of General Ziaul Haq,” although the conference was called for a different issue altogether. These developments led General Ziaul Haq to the apprehension that he has been deliberately isolated from the national and international affairs.

The day martial law was lifted on 31st December 1985, Prime Minister Muhammad Khan Junejo announced Five-point Program of his government on national television.¹ The major objectives of the program were: to establish an Islamic democratic political system, promote an equitable socio-economic system, eradicate illiteracy, eliminate corruption, counter other social evils and consolidate national integration.¹ However, still the Five-point Program did somewhat marginalize Islamization process as the central agenda in the national policy of the civilian government. No doubt, Muhammad Khan Junejo had publicly talked about the need to repeal several aspects of the Islamization program, especially, the much resented and criticised Law of Evidence under which the evidence of two women was declared equal to that of one man in certain legal cases were objected to by the liberals.

Mohammad Khan Junejo had been very critical to the perks and privileges enjoyed by the military officers as extravagances although granted to them by General Ziaul Haq. During his regime, the top brass of military command was rewarded lucrative benefits

before, and after their retirement by providing jobs in the Fauji Foundation,¹ Army Welfare Trust, civil organizations and public corporations. The retired military personnel were also given appointments in the government departments and semi-government institutions like WAPDA, Sui-Northern Gas, PIA, etc. Among the top 40 positions in civil bureaucracy, retired army officers were appointed on one fourth of the positions. During the first seven years of the military regime, retired military personnel had also been given appointments in middle and lower management positions especially in the provincial civil services.¹ Following the footsteps of Z. A. Bhutto, General Ziaul Haq also used the method of lateral entry in the bureaucracy and inducted more military officers on senior posts. This also helped the military in expanding its influence and role in the decision-making process of the civil service.

The tension between Muhammad Khan Junejo and General Ziaul Haq were quite clear with respect to the allocation of resources. Junejo had inherited a persistent budget deficit due to high defence budget, the costs of debt-servicing, and the poor tax collection. No doubt, the situation became worse because the Five-point program of Muhammad Khan Junejo needed enormous resources. To control the budget deficit, Junejo attempted to decrease the defence expenditure for the first three years of the 7th Five Year Plan i.e., 1988 to 1993. The matter faced a sharp public rebuke by General Ziaul Haq declaring that the prevailing geo-political situation in the region did not allow such initiative in defence budget. Earlier in the annual budget of 1987, the imposition of a defence tax provoked public demonstrations which were directly targeted against the military and which subsequently resulted in the withdrawal of the said tax. During these demonstrations, Muhammad Khan Junejo was apparently giving open signals to the taxpayers that unnecessary fiscal burden had been imposed due to pressure from the military for the sake of generating resources.

Prime Minister Muhammad Khan Junejo announced that his government would put 'Generals in Suzuki Cars.' The luxurious official cars for the Generals were decided to be replaced by the modest Pakistani assembled Suzuki Cars. His statement on the floor of the parliament offended military commanders.¹ The military generals were not used to such financial restraint. Therefore, they were clearly annoyed by interference of Muhammad Khan Junejo government in their internal domain. The senior military officers publicly registered their annoyance over these remarks.¹ This activism of an elected prime minister could not be tolerated by the military president. This interference also created an anti-Junejo sentiment among the military high command. Lt. General (retd) Ejaz Azim, the former ambassador of Pakistan to US was encouraged by military to publicly accuse Muhammad Khan Junejo of 'General bashing' and published an article in defence of the military in the newspaper.¹ The article stated that any attempt for sowing doubts in the minds of the soldiers regarding the quality and credibility of their Generals does not serve the interests of Pakistan.¹

Moreover, President General Ziaul Haq also felt insecure due to the growing consensus between the Muslim League of Muhammad Khan Junejo and the opposition political parties for making a rapid progress in strengthening party politics. The undemocratic behaviour of General Ziaul Haq can also be assessed from his presidential address to the joint session of the Parliament on April 7, 1988. He had categorically refused to deliver a speech dictated by the civil government. He rejected it because it was the wastage of time and money that the President will be presenting the views gathered by someone else. Declaring that there was a difference in the circumstances of Pakistan and western democracies, it was not bound to follow their parliamentary practices.¹ However, Mohammad Khan Junejo had considerably relaxed restrictions on the movement and activities of national level politicians. The political activities were so much relaxed that during the year 1988, political circles had been speculating about mid-term party-based elections. General Ziaul Haq declared Mohammad Khan Junejo acting as a “real prime minister” who was moving towards a political direction that could lead to a collapse of the power sharing arrangement.

5.5 Revival of PPP under Benazir Bhutto and Resistance to Ziaul Haq Regime

When Z. A. Bhutto was in jail, Benazir Bhutto and her mother felt the need to continue campaign against General Ziaul Haq’s martial law. They were also left with the responsibility of the defence of Z. A. Bhutto and to keep the Pakistan Peoples Party active. Benazir Bhutto was successful to deliver her first speech in Faisalabad. However, General Ziaul Haq felt that she could become a real threat to his martial law regime. Therefore, she was placed under house arrest by the military after her third speech in September 1977.¹ The day after her arrest, General Ziaul Haq decided to cancel the promised elections thereby intensifying the terror of martial law.¹ In the fall of 1980, the alliance which had supported the death of Z. A. Bhutto at the hands of General Ziaul Haq, i.e., the Pakistan National Alliance approached the Pakistan Peoples Party with the hope to form an alliance. Although opposed to any dealing with the enemies of her father, Benazir Bhutto realized the need of such an alliance thereby accepted the deal, although reluctantly.

A meeting was held with the leaders of PNA and other political parties opposed to martial law in October 1980. The negotiations continued over the next five months and finally an agreement was reached between Pakistan National Alliance, the PPP and eight other political parties.¹ The leaders of various political parties also signed a charter to launch a Movement for the Restoration of Democracy (MRD).¹ The newly created MRD decided to hold a meeting on February 27, 1981, however, General Ziaul Haq pre-empted by arresting eighty-seven political leaders of the Movement including Nusrat Bhutto.¹ The MRD gave a tough time to General Ziaul Haq in mid-1983. General Ziaul Haq had announced elections for National and Provincial Assemblies to be held in February 1985. However,

Benazir Bhutto decided to boycott the elections mainly due to the ban imposed by General Ziaul Haq on the participation of political parties to hold non-party elections.¹ Although, the boycott met with a limited success, yet many of the contestants associated with General Ziaul Haq regime including seven cabinet members were defeated in the elections.

Benazir Bhutto's brother, Shah Nawaz Bhutto died in July 1985 in France.¹ General Ziaul Haq, having relatively weak hold on the country and having recently quashed an attempt of the military coup by his junior officers, publicly announced willingness to allow Benazir Bhutto for return to the country without any restriction. Keeping in view his harsh track record in dealing with his opponents, it was very difficult for anyone from opposition political parties to trust the words of General Ziaul Haq. However, Benazir Bhutto decided that she will be returning to Pakistan for the funeral of her brother and arrived on August 21, 1985. After the funeral, Benazir Bhutto decided to support the fight for the restoration of democracy in Pakistan. She declared her intention to stay in Pakistan and to assume the leadership of Pakistan Peoples Party. However, the police held Benazir Bhutto in a ninety-day detention.¹ Later in November 1985, she was allowed a travel to France for attending the court hearings regarding the death of Shah Nawaz Bhutto.¹

Lifting of the martial law in December 1985 provided a hope for the complete transfer of power from military to the elected representatives.¹ Now the elected government of Muhammad Khan Junejo adopted the policy of a gradual liberalization of the restrictions previously imposed by the military regime. The media was enjoying considerably more freedom and the opposition political parties were permitted political activities freely. It was an appropriate time for Benazir Bhutto's return to Pakistan, therefore, she decided accordingly in April 1986.¹ Although, she could be a major challenge for the new political setup but she was allowed by Muhammad Khan Junejo government. She received a historic welcome and was greeted by almost more than half a million supporters at Lahore airport.¹ The massive support of the party workers was a surprise for all; the media, the civil government, other opposition political parties, and Benazir Bhutto herself was impressed with the gathering of people on such a massive scale at Lahore Airport.¹

Now, Benazir Bhutto and the PPP were having a more strengthened position to speak against General Ziaul Haq and were therefore determined to gain now. In case General Ziaul Haq would allow them to criticise him openly, they would be successful in gathering masses in favour of their cause and demand for a free and fair elections. In that case, if General Ziaul Haq would reinstate martial law for controlling the opposition political parties, it would prove that the reforms and sharing of power with elected government were a mockery. Moreover, re-imposition of martial law would have compelled the people to come to the streets that may result a violent overthrow of General Ziaul Haq's military regime. The PPP had already refused to get registered under the newly amended Political Parties Act which was passed by the National Assembly in December 1985.¹ The PPP started a campaign against the additional powers secured by President General Ziaul Haq through Eighth Amendment.¹ Benazir Bhutto attended several public rallies in which she spoke mostly against General Ziaul Haq and infused

a new spirit in the MRD alliance. She demanded resignation of General Ziaul Haq and, as was expected, also demanded holding of free and fair elections. Both, the PPP and the MRD were now demanding elections not later than the end of 1986.¹

Although, the martial law was lifted in December 1985 and the elected government of Muhammad Khan Junejo had been functioning, yet all this arrangement was happening under the cloak of military regime. Nevertheless, the democratic forces could never back such an arrangement. The speeches of Benazir Bhutto that infused an unshakable enthusiasm in the huge gatherings of the masses. Although, Benazir Bhutto was an excellent speaker, yet she was mainly benefiting from the public sympathy due to the assassination of Z. A. Bhutto. Moreover, she used charismatic qualities rather to focus on national issues of the day.¹ However, she proved a real challenge for the quasi-civilian government under the military-cum civilian Head of the State and the National Assembly elected on party less elections, which had approved major constitutional changes in accordance with the priorities of General Ziaul Haq. The return of Benazir Bhutto, was a positive sign for complete transfer of power, though following the death of Ziaul Haq, to the elected government.

It became quite clear that the fragile, unspoken truce between General Ziaul Haq and the opposition political parties had begun to deteriorate. The ninth anniversary of military coup of General Ziaul Haq was declared as a Black Day by the opposition parties.¹ The insistence of MRD to hold public meeting and celebrate Pakistan's Independence Day at Meenar-i-Pakistan Lahore was not allowed by martial law authorities. The resultant demonstrations on Independence Day in 1986 intensified the conflict between General Ziaul Haq and the opposition leaders.¹ However, General Ziaul Haq was successful to maintain firm control of the situation as Benazir Bhutto along with majority of other opposition political leaders in MRD were already imprisoned.¹ General Ziaul Haq announced in August 1986 that he and his military commanders had a zero tolerance for those demanding an abrupt political change for democratization.¹

Benazir Bhutto was scheduled to appear in court for the hearing of the charges levelled against her on September 10, 1986. However, one day prior to the hearing, she was released from the jail.¹ It shows that General Ziaul Haq did not want to give her a chance by providing the forum of an open courtroom for speaking against the military dictator. However, when released from jail, Benazir Bhutto adopted a restraint in her aggressive campaign with a hope to lead a peaceful movement for bringing about a change in the polity. This strategy was followed by an announcement in October 1986 that she decided to temporarily cancel the demand for immediate elections. Some of the old guards of Pakistan Peoples Party announced to split-off and form a new platform called National Peoples Party, headed by a former party leader from Sindh, Ghulam Mustafa Jatoi.¹ Within a few days, Air Marshal Asghar Khan also announced to withdraw his party from the alliance of MRD. These developments really eroded the image and the agitational campaign of MRD.¹

Mohammad Khan Junejo had assessed that allowing Benazir Bhutto to return to country without any resistance would lead to her running out of the stream gradually. To some extent, it was a gamble on the part of the elected government which had paid off. During the latter part of Muhammad Khan Junejo's premiership, the PPP faced internal rifts which reflected the dismissal of Jahangir Badar as the Punjab Party Chief. Facing a substantial opposition from within the party, the leftists criticised him as a right wing. However, the old workers were not respecting his rise to this position thus regarded him a newcomer in the party. As he gained position in the party due to Benazir Bhutto's favour, other party members like Rao Rashid started publicly criticising the leadership of Benazir Bhutto. While returning to Pakistan, Benazir Bhutto had decided to reverse party policy on several key issues. She clearly ruled out the idea of nationalization program, removed land reforms from the agenda of PPP with an insistence on the issue of productivity and tilted the foreign policy clearly in a favourable direction towards the United States, specifically regarding Afghan issue. The party members of PPP publicly raised questions about the wisdom behind such policy shifts. Consequently, PPP had to perform poorly in the Local Bodies elections of November 1987. Benazir Bhutto's call for public protests for bringing the government of Muhammad Khan Junejo down and forcing General Ziaul Haq for resignation and holding fresh elections had met with little success. The momentum political struggle was shifting away from the PPP; however, a drift abruptly halted the situation when the government of Muhammad Khan Junejo was dismissed in May 1988.

Benazir Bhutto had a strong desire to get the PPP able to beat Muhammad Khan Junejo and General Ziaul Haq in the upcoming elections scheduled for 1990. However, majority in Pakistan was doubting the intentions of General Ziaul Haq to ever allow free and fair elections. The General made it compulsory for all political parties to get themselves registered, and no doubt the registration needed approval of the military. Benazir Bhutto filed a reference before the Supreme Court of Pakistan thus challenging the right of General Ziaul Haq to do that under the Constitution. The Supreme Court, in February 1988, gave the judgement in favour of Benazir Bhutto and the Pakistan Peoples Party.¹ After the longest duration martial law of General Ziaul Haq, people in Pakistan had never expected in early August 1988 that Benazir Bhutto would so soon become the prime minister of Pakistan. It was not because she was lacking popularity but because General Ziaul Haq had been determined to keep her party (PPP) away from power as much as possible. General Ziaul Haq left no stone unturned to ensure this right after the hanging of her father (Z. A. Bhutto), disassociating parties by holding non-party elections, and by strengthening political groups that were opposed to the PPP. However, political manipulation, persecution, repression and control could not destroy the image of Benazir Bhutto or the popular support for her party, and thus she was able to keep the legacy of her father alive.

Although she was young and had endured imprisonment and exile, yet she had been active in politics. She was the most out-spoken and prominent opposition leader for more than eleven years of General Ziaul Haq stay in power. This period had been crucial in terms of shaping her leadership qualities and professional abilities. On different occasions, Benazir Bhutto had showed pragmatism and adopted a non-ideological approach on national issues. She had been able to demonstrate the ability, without any compromise on her party principles, to work together with different political groups within a democratic framework. However, General Ziaul Haq and Muhammad Khan Junejo been maintaining good working relations, Benazir Bhutto would have never returned to Pakistan. In fact, there would have been no need for her return to the country and would not have obtained such popularity among the masses.¹

5.6 Geneva Accords and Ojhri Camp Tragedy: Worsening of the Relations

Mohammad Khan Junejo opted for a policy of reconciliation and tried to take an independent course from General Ziaul Haq in the internal political affairs. However, he adopted the same policy on the management of foreign affairs particularly on the question of Afghanistan. Still, Muhammad Khan Junejo wanted an early settlement of the Afghan issue which was affecting Pakistani society. General Ziaul Haq was committed to continue an aggressive policy on Afghanistan issue thereby supporting the Afghan mujahedeen until they would form government in Kabul. On the other side, Muhammad Khan Junejo was interested in peace dialogues for the quick settlement of Soviet-Afghan crisis. To General Ziaul Haq, the withdrawal of Soviet troops was a positive development but he was concerned about other aspects of the Geneva Accord. His concern was that the Accord would produce a situation where an active support for Afghan mujahedeen supporting Pakistan point of view might be abandoned. Muhammad Khan Junejo called an All Parties Conference on March 3-4, 1988 on the issue of Afghanistan to arrive at some consensus and support on the proposed Geneva Accord.¹ However, as General Ziaul Haq was neither informed nor invited, he perceived it as a conspiracy against his standpoint on Afghan issue. An extraordinary point of concern for the General about the conference was that all the opposition political parties including Benazir Bhutto and those outside the fold of General Ziaul Haq's new political structure were invited. The Conference endorsed the policy of Muhammad Khan Junejo on Afghanistan.¹

Since 1977, it was the first time that a civilian government was actively engaged with the opposition in a dialogue on a matter of national importance. The military became concerned over this open violation by the politicians which was against the spirit of the 1985 power sharing arrangement with the martial law regime. Pursuing her policy to create a block between Muhammad Khan Junejo and General Ziaul Haq, Benazir Bhutto played her cards well to get an invitation for the Conference. Her carefully worded statements not only praised Muhammad Khan Junejo but also encouraged him in extending her an invitation to the Conference. The politicians expressed their usual contempt towards General Ziaul Haq and his military backed policies. Getting united on a forum before the national elections of 1990 (as per schedule) was a unique precedent for the politicians in the last ten years. In

fact, it was the beginning of Prime Minister Muhammad Khan Junejo who had decided to change his shoe size. The main objective of Geneva Accords was to resolve the Afghan conflict or, more specifically, to agree on a framework for the withdrawal of Soviet troops. However, the Accord proved to be yet another area of concern for General Ziaul Haq due the growing popularity of Muhammad Khan Junejo. Not only that the premier appeared to be more willing for establishment of a broader coalition government in Afghanistan, he was also able to take credit for the historic agreement on Afghan issue.

Thus, premier Junejo kept it a little secret that he had been responding to the direct communication from Gorbachev. In fact, Gorbachev felt it more convenient to communicate directly with the more flexible Muhammad Khan Junejo rather than General Ziaul Haq having shared interests with the United States. Realising the increased international standing of Muhammad Khan Junejo after Geneva talks, General Ziaul Haq quickly asserted that the Afghan policy of the government would remain the same as far as support for the Mujahedeen was concerned. General Ziaul Haq wanted to gain more out of the Afghan settlement and brokered a pro-Pakistan interim government in Kabul. Therefore, prior to such settlement, he was not ready for signing the Accord with the Soviet Union especially the interim government of Najeebullah.¹ In fact, General Ziaul Haq had publicly declared that Pakistan would not sign any agreement with Najeebullah Regime.¹ Therefore, being cautious to the Accord, he wanted the civilian government to extend its support to Afghan mujahedeen in the limits defined by the military. The stance of ISI over this issue was also the same, therefore, to bring a Pashtun rule to Kabul it supported a hardliner Engineer Gulbaddin Hekmatyar. Other than this policy, General Ziaul Haq was not opposed to negotiations and finalization of a framework for the withdrawal of Soviet troops.¹ In a meeting held in January 1988, General Ziaul Haq expressed his anger over the issues that the future Afghan government and a ban on the supply of arms to various groups remained unsolved in the Accord which, according to him, will result in a 'bloody civil war in Afghanistan.'¹

The United States oil tycoon Armand Hammer came on a visit to Pakistan in October 1987. He extended a proposal for reinstallation of the former Afghan King Zahir Shah to be a binding force for all the groups in Afghanistan. President General Ziaul Haq, DG ISI Lt. General Hameed Gul¹ and Foreign Minister Sahibzada Yaqoob Khan met the United States representative to chalk out a plan for replacing the Soviet backed government of Najeebullah by King Zahir Shah. Muhammad Khan Junejo felt betrayed when he came to know about the plan devised without his consultation as a brain child of General Ziaul Haq and Foreign Minister Sahibzada Yaqoob Khan. He was already aware about the close relationship of General Ziaul Haq with Sahibzada Yaqoob Khan. Therefore, his intentions about the ongoing peace talks on Afghan issue in Geneva were doubted. Muhammad Khan Junejo removed Sahibzada Yaqoob Khan from his office as Foreign Minister and kept the portfolio with him.¹ The Prime Minister unofficially directed the Foreign Office not to share any file with the President House.¹ The Pakistani print media had widely published reports that the files of foreign office were no longer shared with General Ziaul Haq for approval. General Ziaul Haq appeared to have realised that the civil government had kept him in dark during the negotiations leading up to Geneva over Afghan issue.

Now, face to face with General Ziaul Haq, Muhammad Khan Junejo had been increasingly exerting his authority and was considering himself as the sole in-charge of foreign affairs of Pakistan. Thus, Muhammad Khan Junejo had consolidated his powers and General Ziaul Haq had somewhat reconciled to a lesser role, which pushed him beyond the limits of his patience.¹

ISI had been assigned the task of controlling, liaison with and supply of arms to Afghan mujahedeen. The collaboration of ISI, CIA and Saudi Intelligence Service appeared to have given an unprecedented strength and autonomy to ISI. The ISI also supported Afghan Taliban and radical Islamist groups in Afghanistan and continued their support even after the Soviet withdrawal. The ISI had been playing a significant role in Afghan policy, nuclear program and the policy towards India in the post-Ziaul Haq period thus minimizing the role of civilian governments vis-à-vis the military. No doubt, the presence of a military President along backed by a powerful spy agency - the ISI, made the position of weak prime minister more vulnerable. The consequences were obvious but Muhammad Khan Junejo had to gain a temporary victory by signing the Geneva Accords on 14 April 1988 and thus Najeebullah came to power.¹ Although Muhammad Khan Junejo had initially moved along the lines previously drawn by General Ziaul Haq regarding Afghan issue, yet the former moved too swiftly on the Geneva Accord. However, it was felt by General Ziaul Haq that more concessions could have been wrested on the establishment of an interim Mujahedeen government in Kabul.¹

The Geneva Accords resulted in the withdrawal of the Soviet troops from Afghanistan, discontinuation of the supply of arms to the Mujahedeen by Pakistan and acceptance of the government of Najeebullah to reign in power till 1992.¹ These provisions of the Accord were completely against the plans of General Ziaul Haq who intended an extension of war until his objectives were obtained. Even on some aspects of the Accord, the viewpoint of General Ziaul Haq held and that of Muhammad Khan Junejo widely diverged. General Ziaul Haq had always demonstrated a very hard viewpoint on the issue of Afghanistan even to the extent of being unrealistic. The Accord in other words meant the acceptance of an independent state of Afghanistan, but General Ziaul Haq the otherwise view.¹ He even wanted to disregard implementation of the Accord and to continue support to the Mujahedeen until they would capture power in Kabul and defeat the government of Najeebullah. General Ziaul Haq saw in the hastily concluded Accord a compromise on the formation of a Mujahedeen-backed government in Kabul because this issue was left to the diplomatic initiatives of the United Nations. General Ziaul Haq was of the view that when the settlement of the war in Afghanistan was about to arrive, Pakistan was in a better position of getting the fruits of its sacrifices during Afghan war. However, still General Ziaul Haq in a meeting held for celebration of Geneva Accords seemed satisfied and felt pride to the extent that he reminded some of the cabinet members of his statement in 1984. He said, "You see my belief in miracles. The Russians are now leaving Afghanistan."¹

Besides Afghan issue, trouble also intensified between Muhammad Khan Junejo and General Ziaul Haq when the former tried to assert his authority in appointments and promotions of senior military commanders like Major General Shamim Alam who, later, also became Chairman JCSC, and

others. President Ziaul Haq wanted to promote Major General Pirdad Khan as lieutenant general. This controversy created serious tensions between General Ziaul Haq and Muhammad Khan Junejo finally ending in a compromise by promoting both as lieutenant generals. The military as an institution showed serious concerns and felt insulted over the civilian interference in its internal and professional affairs. The preferences of General Ziaul Haq and Muhammad Khan Junejo differed on national issues like procurement of weapons, foreign visits and protocols and normalisation of relations with neighbouring countries especially India. Moreover, according to General Ziaul Haq's own aides, they had obtained information about his removal from the post of Army Chief through the parliament.¹

The disastrous blasts at ammunitions depot in Ojhri Camp located in the densely populated city of Rawalpindi resulted in another reason of confrontation between the elected government and General Ziaul Haq. The crisis emerged prior to the signing of the Geneva Accords because of heavy blasts on April 10, 1988 inside a huge ammunition depot.¹ Arms received from the US and the UK had been dumped into this temporary store which were supplied onwards to the Afghan Mujahedeen. These weapons were stored under the jurisdiction of ISI, a military-cum-civilian intelligence institution in Pakistan. The special cell of ISI responsible for controlling of this whole process of Afghan resistance movement was under the command of General Akhtar Abdur Rahman. This unit was not even answerable to General Headquarters but reported only to General Ziaul Haq. The depot was an old building used as barracks during 2nd World War. Sufficient safety measures were not taken as per military standard, to use it as an ammunition depot. The blasts resulted huge terror coupled with many human losses of civilians because some missiles blasted down over Rawalpindi and the adjacent city Islamabad. Majority of the people considered it as an attack from India, thus causing with more worries of a possible attack on the nuclear installations of Pakistan at Kahuta.

The more disappointing aspect came up with the rumours that the ammunition dump was intentionally blown-up just prior to the visit of a Defence Audit team from the United States, for covering up the fact that some Stinger missiles were sold to the neighbouring states, most probably to Iran.¹ The military establishment had come under severe criticism in public circles. However, the military was of the view that the project was run by the ISI which is a quasi-civilian institution and the military had no role in it. The then ISI Chief while accepting the responsibility on the part of his institution offered his resignation. Everyone demanded an independent commission to conduct inquiry into the incident and fix the responsibility. The masses termed it a serious negligence, criticising that what was the need of dumping an ammunition in a depot situated near a civilian population. The elected government of Muhammad Khan Junejo, was receptive to the demand of the people for an inquiry. The prime minister, decided on reasonable ground to hold someone accountable for planning and launching such a disastrous explosion that shook the twin cities of Rawalpindi and Islamabad. He constituted a six-member parliamentary committee chaired by Aslam Khan Khattak for conducting investigation in this regard. The findings of the Committee were believed to have found the former DG of ISI, General Akhtar Abdul Rehman as guilty who was the hero of Afghan War.¹ At times, he was

General Ziaul Haq's most powerful ally and the then Chairman JCSC, was recommended by the committee to be dismissed.¹

The tensions between General Ziaul Haq and Muhammad Khan Junejo were at its peak on the investigation reports of the parliamentary committee on the explosion of the depot. General Ziaul Haq wanted to protect his fellow officers who were held responsible for this explosion.¹ However, Prime Minister Muhammad Khan Junejo openly accused General Akhtar Abdur Rahman, the former Chief of ISI, and held him responsible for constructing the depot near a populated area and deliberate attempt to blow it off.¹ No doubt, General Akhtar Abdur Rahman remained the most powerful military officer in Pakistan after General Ziaul Haq. Similarly, ISI is the most powerful institution in the country after the Army. Nonetheless, it shows that the ultimate cause behind the dismissal of the civilian government of Muhammad Khan Junejo was the explosions at Ojhri Camp, and the Geneva Accords might have been a secondary reason. However, the issue of investigation remained unsolved after the dismissal of the civil government, and is still a mystery.

A relatively minor and an unfortunate incident had further increased the strained relations between the military and the civil government. A quarrel between a local parliamentarian of Muslim League Bashir-ul-Hasan and military officers resulted in a civil protest thus leading to a violent protest at an Army training school near Rawalpindi. The mob smashed furniture of the school and the portrait of General Ziaul Haq was burnt by the protestors. The actual incident happened after the military officer appeared to have been teasing a girl, thereby leading to an outrage in the local community. The involvement of a parliamentarian and the subsequent violent protest at the training school would never occur if martial law was intact which had made the military accustomed to such an immunity. The ruling party i.e., the Muslim League and the prime minister did not disown their parliamentary member. No doubt, the prime minister publicly raised questions on the conduct of concerned military officers. Later, the day after the civil government of Muhammad Khan Junejo was sacked; Bashir-ul-Hasan was also arrested.

5.7 Dismissal of Junejo Government and Supreme Court Decision

The differences between the elected government of Muhammad Khan Junejo and the military establishment provided uncomfortable signs to President Ziaul Haq that the former's assertions of independence would lead to weaken the control of the latter. General Ziaul Haq appeared to have not only calculated the danger from the Prime Minister, but also his possible removal from the post of Army Chief, thereby leading to punishment of the latter. President General Ziaul Haq was informed by the military secretary of the prime minister that he has approved the recommendations of the parliamentary committee on his way back from Manila. President General Ziaul Haq immediately planned to get rid of the prime minister.¹ Therefore, exercising his powers under Article 58(2)(b), General Ziaul Haq dismissed the elected government of Muhammad Khan Junejo and dissolved the National and Provincial Assemblies on May 29, 1988.¹ Without any surprise, the talk of accountability

and fixing responsibility for the Ojhri Camp tragedy, that had gained considerable momentum with the support of Muhammad Khan Junejo, abruptly came to an end. Moreover, the demand for the resignation of General Akhtar Abdul Rehman was subverted by the action of President General Ziaul Haq.

General Ziaul Haq's decision to dismiss the elected government along with the dissolution of assemblies was a gross error of judgment and calculation. He may have opted for a more sophisticated approach thus avoiding an irrational political decision that ultimately put President Ziaul Haq into a tight and somewhat pathetic corner by the time he died in the plane crash. For example, it was not difficult for General Ziaul Haq to have replaced Muhammad Khan Junejo by more pliable premier from within the Muslim League in the National Assembly. However, in the presence of an Army Chief-cum-President, it was difficult to expect that democracy could have been facilitated to flourish. By dismantling the whole institutional setup created under his own arrangements, General Ziaul Haq lost, by this illogical decision, what he had gained from the power sharing arrangements of 1985. The process to transfer the power from the military to the civilians was derailed by its architect General Ziaul Haq, after little more than three years only, and mainly due to the manipulation of his close aides.¹ General Akhtar Abdul Rahman is believed to have played a major role in this decision. Knowing that reports of the investigation were going against him, he might have convinced General Ziaul Haq that Mohammad Khan Junejo was playing his cards to get rid of him. However, the frustration of General Ziaul Haq in dealing with the Afghan policy by Muhammad Khan Junejo cannot be ignored as a major factor of his dismissal.¹

However, in sacking the premier, President Ziaul Haq stressed the main reason as delay in the implementation of Islamization program in the country. The Ninth Constitutional Amendment Bill was passed from the Senate thus declaring Shariah as the supreme law of the country but was pending for the next National Assembly to be approved by the President of Pakistan. In general, President General Ziaul Haq made the following allegations against the government of Muhammad Khan Junejo:

- a) The law and order situation of the country had broken down to such an extent that resulted in tragic losses of human lives;
- b) The life, property, honour and security of the citizens had become completely unsafe;
- c) The integrity and ideology of Pakistan had seriously endangered thus generating doubts in this regard;
- d) The President's promises made to the people through the referendum of 1984 regarding the enforcement of Islam were not fulfilled;
- e) The morality of the people had deteriorated to an unprecedented level;

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- f) The country was faced with such a situation due to which the civil government of the federation could no longer function in accordance with the 1973 Constitution, thereby making it necessary to go for a fresh appeal to the electorate.¹

However, General Ziaul Haq's explanation of deviation from Islamization lacked any substance and made the constitutional basis questionable. Despite the differences between General Ziaul Haq and Muhammad Khan Junejo, the parliamentary leadership was still providing considerable benefits to his military regime. It was still providing a cover to the holding of power by the military and was not seriously threatened. Moreover, if Muhammad Khan Junejo had decided to get out of the lines earlier drawn by the military, he could be dispensed with an alternate within the National Assembly. The limited liberalisation of political process had strengthened the political system and the process of democratisation. Thus, by dismissing an elected setup which was constrained by sharing limited powers, the military committed gross mistake thereby bringing far more damage than good to their interest as an institution. The sacked prime minister showed a composed behaviour and decency in his response rejecting all the allegations made by General Ziaul Haq for dismissal of his government.¹

A caretaker cabinet was constituted without any prime minister. Realising the mood of the masses well, General Ziaul Haq announced on July 16, 1988 that new elections would be held on November 16, 1988, although, once again on non-party basis.¹ However, before Pakistan could be brought back to democracy, the Army Chief, President General Ziaul Haq died in his C-130 plane crash on August 17, 1988 accompanied by other 17 senior military officers such as Chairman JCSC, General Akhtar Abdul Rehman.¹ Arnold Raphael, the US Ambassador to Pakistan was also on-board when the plane crashed.¹ Among the consequences of the investigation reports of Ojhri camp tragedy was the loss of credibility by General Ziaul Haq both within Pakistan and also in the United States. That is the reason, it is said that the General had allegedly decided planned to eliminate Junejo.¹

However, by the time, General Ziaul Haq died, his political system was in shamble and, therefore, he was defensive and on the retreat once again. The audience was not amused and it was quite clear that a phased strategy of democratisation was not the main agenda and General Ziaul Haq was up to his tricks again. It was largely assumed that the General-cum-President, who was pulling the strings of quasi-civilian setup had been deciding for his personal appearance on the stage once again. However, after the death of General Ziaul Haq, a high-level meeting held in Islamabad, which was attended by the civil and military leadership to take a decision on the issue of succession. The problem was resolved in accordance with the Constitution and Ghulam Ishaq Khan, the Chairman Senate, stepped into the presidential office as Acting President of Pakistan.¹

Neither Muhammad Khan Junejo, nor others challenged the validity of dismissal and dissolution order of the government along with the National and Provincial Assemblies in any court during the life time of General Ziaul Haq. When General Ziaul Haq died, Haji Muhammad Saifullah Khan, one of the dissolved National Assembly members, filed a writ petition in Lahore High Court

titled: Haji Muhammad Saifullah Khan vs Federation of Pakistan. Hearing the case, the Court rejected the charges based on which President General Ziaul Haq had dismissed the National and Provincial Assemblies. The Court declared the charges being so ambiguous and unreal that they could not be sustained in the law. The verdict of the Full Bench of Lahore High Court in this regard was that the dissolution of National Assembly by the President was illegal and unconstitutional. However, the Court neither restored the civil government nor the assemblies, although the feelings of common people favoured Muhammad Khan Junejo. Further, the Court held that since the elections had been scheduled for 16th and 19th November 1988 and the nation was preparing for that, the Assemblies could not be restored.¹

As the Lahore High Court declared the dissolved National Assembly as dead one, maintaining that it could not be restored again, therefore, the judgement was challenged in the Supreme Court of Pakistan.¹ The Court held detailed hearings, and scrutinising the case it upheld the verdict of Lahore High Court in first week of October 1988.¹ Although declaring the dissolution of National Assembly as illegal and unconstitutional, yet it did not restore the National Assembly. Later, General Aslam Baig, the successor Army Chief accepted in a press conference on 4th February 1993 after his retirement that a message was sent to the Supreme Court judges, not to issue orders for restoration of the assembly and let the elections process take place as per schedule.¹ It proves that an anti-democratic role was played by the apex court and that the Army Chief committed an unqualified interference in the proceedings of the Supreme Court. This also shows the powers of the Army Chief to influence the civilian institutions during the processes of transfer of power from military to the civilians. It discloses the weaknesses of the judiciary as an institution which was not able to deliver justice and take an independent decision in the matter. After this press conference, the claims of Mirza Aslam Baig were not denied by the judges of Supreme Court rather proceedings for contempt of court were initiated. However, Mirza Aslam Baig, taking a stand on his words before the Court maintained that he had disclosed what the reality was. Mirza Aslam Baig, though found guilty of contempt of court, was not charged with any punishment because he had already been reprimanded in the Court.¹

However, the decision of Supreme Court against the dissolution of National Assembly by President General Ziaul Haq, at least, confirmed its malafide, illegal, and arbitrary nature.¹ President General Ziaul Haq and his advisers also knew this, but they thought that they would be able to overcome the difficulties and effectively manage the crisis as was done in 1977. Nonetheless, the dissolution of the National Assembly validated the assumptions that General Ziaul Haq was not sincere in his promises for democratisation of the system. If he could not share power with his handpicked and docile prime minister and if he could not tolerate his assertion of authority in the mandated sphere, how could he be agreed to the transfer of power in an orderly and peaceful manner. His action also pushed those political forces to opposition that had cooperated with him in holding the 1985 elections. Even the President began to think and talk of restructuring the parliamentary system and to form a new coalition of pro-Ziaul Haq cronies.¹ The elections he had announced for November 1988 could, most likely, be postponed or used for a referendum on new constitutional proposals. General Ziaul Haq had

exhausted all his political cards to legitimise his stay in power and to counter the growing demand for complete democratisation.

It is quite interesting to know whether the judiciary would have declared the dissolution of National Assembly illegal and unconstitutional, had the petition been filed during the life of General Ziaul Haq. Moreover, had the denial of Supreme Court to restore the National Assembly undermined the very spirit of declaration of the dissolution as unconstitutional? Despite these questions, the general effect and role of the Supreme Court in the process of democratisation was appreciated as positive and constructive. This time, had General Ziaul Haq lived, he would have faced an effective and extremely hostile opposition. The plane crash that took his life along with the United States' Ambassador and other high ranking military officers, gave him an honourable exit from the upcoming hostile political arena of Pakistan.¹ Realising the mood and possible response of the people, civil society, political parties and the international democratic forces, the military high command decided not to take control of power and let the democratic process continue by allowing the scheduled elections. However, this transfer of power by the military to the elected government was allowed mainly due to the presence of Eighth Constitutional Amendment, which they were still able to exercise indirectly through the indirectly elected President.

Benazir Bhutto had challenged the amendments introduced in the Political Parties Act 1962 in the Supreme Court to be contrary to the fundamental rights ensured in the 1973 Constitution. Moreover, the plea was that the effect of these amendments had resulted in curtailing the jurisdiction of higher judiciary to review and protect basic rights of the people. The citizens were not given the right to form or be members of a political association under the 1973 Constitution originally existed prior to the imposition of military rule on July 5, 1977. The Supreme Court, in this case known as *Benazir Bhutto vs Federation of Pakistan* 1988 declared that the 1973 Constitution of Pakistan had envisaged a parliamentary democracy based on party system. As parliamentary form of government is comprised of the elected representatives associated with a party which enjoys majority in National Assembly therefore, the future elections would be held on party basis.¹ Moreover, the Court also held that all political parties were eligible for contesting the general elections for the national and provincial assemblies.¹ The decision eliminated any distinction between registered and unregistered political parties. Consequently, the judgement of Supreme Court in this case paved the way for party based general elections which were already scheduled in 1988.¹

Notes and References:

Chapter - VI

RESTORATION OF PARLIAMENTARY DEMOCRACY IN THE POST

ZIA-UL-HAQ ERA

This chapter deals with the holding of general elections in the post Ziaul Haq period and the process of transfer of power to an elected government. It focuses on the governments of Benazir Bhutto (1988-1990) and Nawaz Sharif (1990-1993), who ruled Pakistan one after another for their first term each but failing to govern for the mandated term. This was mainly the period of powerful Ghulam Ishaq Khan as head of the state. It also studies the power sharing arrangement which evolved in a new pattern of civil-military relations in an extra-constitutional understanding between the military and civilian executive. It further focuses on the role of judiciary for democratic consolidation in Pakistan during the post Ziaul Haq period. It analyses that how the military, ISI and the president controlled that political saga and did not let the elected governments work independently. The period is full of exigencies of president to topple democratic governments one after another with the backing of the military in backdrop of a controversial yet significant role played by the judiciary.

6.1 Elections of 1988 and the Role of Military in Transfer of Power

Benazir Bhutto had returned to Pakistan in 1986 after spending a long period of exile. She was actively involved in politics and decided to contest the November 16, 1988 elections after the death of General Ziaul Haq. Political parties having a nominal support base wanted to convert the Movement for Restoration of Democracy (MRD) into an electoral alliance to ride on the mass support of the Pakistan Peoples Party. They wanted to get more of their members elected to the new National and Provincial Assemblies than they could be able to do on their own. The PPP, however, showed generosity in declaring that it would not file nomination papers of their candidates against any of the heads of the parties in MRD. However, the MRD alliance which had functioned as the only opposition to General Ziaul Haq regime, withered away due to differences on seats adjustment. Before the campaign for 1988 elections started, the senior army commanders realized that the parties opposed to Pakistan Peoples Party were lacking an alliance which could go in the benefit of PPP from the point of view of electoral score. To preserve their interests and reduce PPP's influence, the military took a preparatory measure to pre-empt PPP's success with the help of Inter-Services Intelligence (ISI).¹ The ISI under Lt. General Hameed Gul started working on its agenda and persuaded the support of military to the conservative political parties to form an alliance called Islami Jamhoori Ittehad (IJI).¹ More than evolving a common ideological stance or, at least, a common political agenda, the conservative parties in IJI had united essentially on denying power to the PPP. Another alliance was formed in the name of Pakistan Awami Ittehad (PAI).¹ The Awami National Party and the Jamiat Ulema-e-Islam (JUI) participated in the elections without getting into any alliance. The incumbent caretaker chief ministers used government

machinery coupled with public funds for patronizing and generating support for IJI candidates against the PPP.¹

However, despite alliances and interim government's support to them, this time the opposition to PPP was not as widely united as it was during the elections of 1977 and in the post-election agitation. The PPP was successful to emerge as a single largest party by winning 93 of the 207 National Assembly seats and the IJI secured only 54 seats.¹ Thus, due to the political role played by the ISI and the military, none of the parties could secure clear majority. The divided mandate created a favourable situation for the military in dealing with the coalition government of PPP which would be in a weaker position.¹ The military circles still maintain that if there was no factor like IJI, the general elections in 1988 would have never held.¹ Mirza Aslam Baig, the Army Chief, announced that the Army will extend their support for a constitutional and democratic process to transfer the authority to the civilian government. He insisted that the Army believes in people's rule having no lust for power. To him, the sole objective of the military was to preserve the security and integrity of the nation.¹

The Acting President, Ghulam Ishaq Khan, having the discretionary power to appoint Prime Minister of his choice,¹ also expressed favourable views about the democratic process of transferring authority to elected government. However, PPP's failure to win a clear majority enabled the Acting President, Ghulam Ishaq Khan, and the military to delay handing over of power to Benazir Bhutto for two weeks.¹ It was only after the PPP signed an agreement with the Muhajir Qaumi Movement (MQM)¹ thus enabling it for a clear majority in the National Assembly, intervention of the United States ambassador,¹ and mainly that Benazir Bhutto compromised with the military, only then the President allowed her to form a coalition government.¹

The general practice throughout the world is that the military transfers the authority to a civil government, subject to the indemnification to all constitutional and legal steps it has taken in the past¹ and needs assurance for its future interests. The same happened in 1988 when the military agreed to transfer authority to Benazir Bhutto with certain conditions. A series of meetings were conducted between the Army Chief and Benazir Bhutto to finalise a deal prior to her assumption of authority as Prime Minister. The uncertain political situation coupled with the lack of clear majority of the PPP in the National Assembly, had made it realistic and compulsory to negotiate and have some agreements with the military. In fact, the Army Chief General Mirza Aslam Baig had promised the widow of General Ziaul Haq that transfer of power to Benazir Bhutto or Muhammad Khan Junejo would not be allowed after the general elections. Later, in a meeting of JCSC on November 24, 1988 General Mirza Aslam Baig informed the JCSC that Benazir Bhutto had agreed on five points.¹

Benazir Bhutto consented in the final agreement to three major conditions of the military which were their main areas of concern. These included: an assurance for election of Ghulam Ishaq Khan (a Ziaul Haq Loyalist) as President of Pakistan,¹ retention of Former Foreign Minister Lt. General Yaqoob Ali Khan¹ in the cabinet and not to reduce the defence budget.¹ The demands were accepted by

Benazir Bhutto because since 1948, none of the Prime Ministers could resist the demands of the military regarding the defence policy.¹ It was, in fact, a troika for power sharing arrangement under the informal rules of the game thus dividing the state powers among the President, the Prime Minister and the Army Chief.¹ The agreement, reached under the pressure, confirmed the powers of the military and overall controllers of the politics. Benazir Bhutto avoided asserting her powers as premier, at least, those related to the professional and corporate interests of the military and the defence issues. Therefore, the coalition government of PPP started with Benazir Bhutto as Prime Minister with her hands tied, and in the presence of an assertive Army Chief, ready for taking an opportunity that could become a base for removal of her government.¹ Benazir Bhutto, Co-Chairperson of the PPP, had taken oath of the office on December 2, 1988 as the Prime Minister under a coalition government with MQM.¹

6.1.1 Benazir Bhutto and her Dealing with the Opposition

Democracy under the elected government had been restored in Pakistan but the old political divides had not closed. The November 1988 elections produced two more or less equally strong political groupings, the PPP and the IJI. Benazir Bhutto was young, determined and loyal to her aim of promoting democracy. However, the office of prime minister proved to be a tough job for her due to the serious challenges. Similarly, her cabinet consisted of young and inexperienced ministers. Another hard luck which chased her was to accommodate her family members in the prestigious offices. The position of senior minister was allocated to Begum Nusrat Bhutto, the then PPP Co-chairperson, MNA and mother of Benazir Bhutto. Moreover, taking undue advantage of his wife's position, Asif Ali Zardari resorted to an assertive approach in the decision-making processes who was also blamed for his alleged involvement in high level financial embezzlements.¹ It was affecting Benazir Bhutto's assertion to perform as a sincere public servant.¹ Thus the issues of corruption and nepotism became main charges when her government was dismissed by President Ghulam Ishaq Khan latter in 1990.¹

The dilemma in the politics of Pakistan is that the politicians do not show flexibility while dealing with matters of national importance. The coalition government under Benazir Bhutto is known for hostile with the opposition parties, especially the provincial government of the Punjab. Peoples Works Program (PWP) of Benazir Bhutto government empowered PPP workers to implement this program through generous funding from the federal government. The opposition political parties took it as a direct threat to their interests along with the PPP coalition partner - Awami National Party in Khyber Pakhtunkhwa (then NWFP). Other than this program, no new legislation could be passed by the National Assembly and only amendments to few existing laws were incorporated. The PPP government, though blamed the Senate where the IJI was enjoying majority, the main reason behind poor performance of the former was the continuous political instability in the country which exhausted the energies of the National Assembly.¹

Benazir Bhutto government was successful in passing the annual budget for 1989-1990 from the parliament. However, in the following months it was given a tough time by the IJI, the MQM and ANP in the National Assembly. The allies of PPP i.e., the MQM and ANP parted ways one after another. Before ending her first year in office as Prime Minister, a no-confidence motion was presented by the Combined Opposition Parties (COP)¹ against her government on November 1, 1989. However, Benazir Bhutto showed her willingness to join the opposition benches in case of losing majority in the National Assembly. The Prime Minister was expecting her defeat in the no confidence move due to her differences with President Ghulam Ishaq Khan. She doubted that the President had sided with the IJI to launch the no-confidence move against her. However, the Army Chief remained neutral during this process and expressed his support for the democratic and constitutional processes. He even turned down the request of Nawaz Sharif to have a meeting prior to the voting on the no-confidence motion.¹

However, the public statement of the Army Chief for disapproval in this regard and the worsening relations with the provinces remained a matter of high concern for the prime minister in days to follow. The IJI was established with the efforts of ISI and Nawaz Sharif was also the product of General Ziaul Haq military regime. Therefore, during the confrontational politics between the federal government of Benazir Bhutto and the IJI government in the Punjab, both the President and the Army Chief provided full support to Nawaz Sharif.¹ To defeat each other, both the IJI and Benazir Bhutto's government tried their level best buying off the loyalties of the MNAs.¹ Operation 'Mid Night Jackals' was conducted by the ISI to earn loyalties of MNAs of ruling PPP.¹ The MQM, with the efforts of IJI and ISI, withdrew from coalition government of PPP.¹ However, MQM got embarrassment when the government of Benazir Bhutto successfully survived when IJI secured only 107 against 119 votes to make the move successful.¹ It was evident that ISI had fully supported IJI against PPP. Therefore, the government decided to replace DG, ISI with a person of Benazir Bhutto's choice.

The open call of Nawaz Sharif to the President and the military establishment for intervention in the politics and support in stabilizing strife-torn or disorderly conditions had reminded of the authoritarian patterns experienced during the General Ziaul Haq era. On the political front, the Pashtun-dominated ANP, the Balochistan National Alliance (BNA) and the MQM, all seemed to believe that their lot was more secure in a loose alliance either with the PPP or the IJI. None of these regional political parties, however, attempted to provoke military intervention and whatever support they provided, the larger political parties always secured their self-interest.

Chief Minister Nawaz Sharif was portrayed by the strong government of IJI in Punjab as an ultimate saviour of the interests of Punjab. A more damaging aspect of these endeavours was the indirect support of the military thus its backing benefited him further by starting a campaign of confrontational politics against the PPP coalition government at the centre thereby adding further to the already troubled democracy in Pakistan.¹ Benazir Bhutto government's weak position at the centre led to its dependence on the military as a stabilising and influencing force thus deflecting its attention and energies to take adequate steps for pressing issues both at national and regional levels. However, the

federal government of Benazir Bhutto used full powers and resources to assert its authority in the Punjab. The IJI government in Punjab fully resisted and came out in open confrontation thereby refusing to follow the orders of the central government. This resulted in bypassing all the constitutional prerogatives of the central government.¹ The provincial government in the Punjab even refused to extend an official protocol to the prime minister during her visit to the province.¹ Nevertheless, all the negative strategies of confrontation, retaliation, competition and meanness were adopted in this controversy between the federal and Punjab governments.¹

Keeping in view the problems of prime minister with the IJI government in Punjab, none of these developments made the task of young prime minister easier. In fact, they made it even more imperative that Benazir Bhutto had to work in close harmony with the Army. In doing so, Benazir Bhutto had convinced herself that she was not only safeguarding the integrity of Pakistan but she had also prevented the Military from playing a more direct role in the politics of Pakistan. The main impact on the consolidation of democracy was that the distrust between the two main political actors did not let them work together and form an effective alliance both against the president and the military. Both the parties, when in power during their respective terms, struggled for repealing the Eighth Constitutional Amendment. However, being rivals to each other, they always called the president to use the same Eighth Amendment to dismiss the rival party government.

6.1.2 Civil-Military Relations under General Mirza Aslam Baig

The elected government of Benazir Bhutto came into power after a long military rule of President General Ziaul Haq (1977-1988). The Eighth Amendment had empowered the President with such powers that are assigned to him in a presidential system. Moreover, the powers of prime minister were drastically reduced thereby lowering her position to the status of a senior minister only. This experimentation was completely in contradiction to the British model of parliamentary democracy commonly known as mother of all the parliamentary system of governments in the world and where the Head of the State appears to be a titular one. Despite these issues, Benazir Bhutto took start of her government with friendly and supportive relations with the military establishment. Initially, no Pakistani institution appeared to provide firm support to Benazir Bhutto's government than that of the military establishment. General Aslam Baig assumed the office of Army Chief after General Ziaul Haq died in a plane crash along with other senior generals, who publicly and repeatedly declared his confidence in the elected government. Irrespective of the motives of the military establishment, their support for Benazir Bhutto government decreased substantial threats from other circles of the opposition.

The military establishment stood with Prime Minister Benazir Bhutto on her priority on reinforcing close ties with the United States. In fact, Benazir Bhutto took pride in having convinced the United States that the defence needs of Pakistan's military were neither frivolous nor threatening. She had also publicly compared her ability of obtaining sixty F-16s from the United States against that of

her predecessor who had only received forty. On another important issue of Pakistan's nuclear program, during her address to the Congress, Benazir Bhutto had to take the pains to underline her government's policy not to build nuclear weapons. Benazir Bhutto declared that Pakistan had no intention and would not indulge a nuclear arms race. It is noteworthy to mention that after Benazir Bhutto started her government, the military and ISI realised that she was not sincere with the agenda given to her by the United States which included compromise on nuclear, Kashmir and Afghan policies.¹

Benazir Bhutto's government came in troubles as soon as her differences developed with the top military leadership. The matters related to the promotion and transfer of military officers along with the management of internal affairs of the military became the reason of controversy. When Benazir Bhutto asked about her role in the transfer of the Corps Commanders and other important postings, General Aslam Baig clearly opposed her efforts thus conveying that it is the domain of Army Chief and the premier (if invited) was simply to witness the proceedings of the meeting and ceremonies.¹ The helpless position as explained to her by the Army Chief simply resented Benazir Bhutto. As a result, the friction further increased in the coming years, when Benazir Bhutto frequently tried to intervene in the internal matters of the military.

Benazir Bhutto also expressed her concern that due to the withdrawal of Soviet troops from Afghanistan, the interest of United States in Afghanistan and, hence, in Pakistan might be diminishing. Benazir Bhutto used every opportunity to convince the United States that the struggle for self-determination in Afghanistan was not over and that the support of the United States in this regard remains an essential ingredient. A durable solution to the Afghanistan problem following the Soviet withdrawal had rested on the outcome of the prolonged conflict. The ISI was known to have favoured the more conservative, fundamentalist Peshawar-based groups and, in the wake of Soviet troops' withdrawal, their role in the future of Afghanistan had become suspected. As a result, violent clashes were more common between fundamentalist and non-fundamentalist guerrillas which undermined what little unity the mujahedeen had gathered against the Soviet troops. Significantly, it had also reduced their strength to successfully take on the Kabul forces. Thus, the Soviet-backed Najeebullah government did not fall as initially expected by the ISI and the war had continued with a new but more constrained intensity.

The failure of mujahedeen, the Afghan Interim Government (AIG) to occupy Jalalabad in the early 1989 campaign and get recognition of their government at the international level was judged as a defeat for Pakistani mentoring of the struggle, led by Lt. General Hameed Gul as DG ISI. Hameed Gul had claimed in a meeting with Prime Minister Benazir Bhutto that mujahedeen could win the battle within a week, but they lost.¹ Thousands of mujahedeen were reported to have been killed in the ill-fated action and the defeat was attributed directly to Pakistan's military strategy, especially a responsibility of the ISI. However, Lt. General Hameed Gul claims that it was Benazir Bhutto's decision instructing him on March 5, 1989 to inform mujahedeen that their government will be

recognised only after capturing Jalalabad.¹ It is also claimed that during the second term of Benazir Bhutto in office, the idea of creating and supporting Taliban in Afghanistan was of Naseerullah Babar, the then Interior Minister.¹ He had publicly accepted his role in creating the group of Afghan Taliban and extending them support from Benazir Bhutto government.¹

Finding it as an opportunity to neutralize the increasing involvement of ISI in the politics, Benazir Bhutto replaced the DG ISI, Lt. General Hameed Gul in May 1989 who had been heading this all-powerful intelligence institution. However, Lt. General Hameed Gul is of the view that except the establishment of IJI, he had not played any role in the politics and/or removing Benazir Bhutto.¹ The office of Director General, ISI was filled without the consent of Army Chief which virtually had to offer a candidate or a list of three candidates to be appointed on this post. General Mirza Aslam Baig half-heartedly allowed this replacement but showed a severe displeasure over the appointment of General (Rtd.) Shamsul Rehman Kalu.¹ The move against Lt. General Hameed Gul was an attempt by Benazir Bhutto government to consolidate power.

Moreover, another speculated aspect of the removal of Lt. General Hameed Gul was his role in the creation of IJI - an opposition alliance which contested the 1988 elections against PPP. Benazir Bhutto had requested information from the new DG ISI, Lt. General Shamsur Rahman Kalu, about the ISI funds used by his predecessor. There were reports that ISI funds were used to support IJI efforts to unseat Benazir Bhutto, although no concrete evidence to this effect could be obtained. By removing Hameed Gul, Benazir Bhutto tried to minimize the role of Army Chief in appointing DG of ISI. It was done on the advice from General (Retd.) Imtiaz Ali, advisor to the prime minister, which was an act done against the tradition of the Army and the prevailing practices.¹ In fact, General Hameed Gul was more feasible because he used to manage the ISI, almost independently from the Army Chief. However, Benazir Bhutto continuously suspected his alleged pro-Nawaz manoeuvrings to destabilize her elected government. The setback of Jalalabad battle was an opportunity to curtail the autonomy of ISI in conducting operations. Both Benazir Bhutto and General Aslam Baig had enough reasons to remove General Hameed Gul.¹ However, this has never been the tradition of the military to support an elected government for acting against a serving military officer.

Lt. General (Retd.) Shamsur Rahman Kalu, a polite military man, was not in a strong position and was facing continuous resistance from the establishment to work with them. The situation made him less functional in his sphere of powers, thereby alienating the military especially the Army Chief from the working of ISI.¹ As a result, the MI which was headed by Lt. General Asad Durrani was used to counter the ISI and provide information to the Army Chief. General Mirza Aslam Baig, while establishing 202 Survey Section directed the DG MI, to update the military of the political situation thereby showing his distrust for the ISI and IB. However, the situation brought a new challenge for the elected government of Benazir Bhutto.¹ The resistance of Army Chief to the initiative of an elected government and transformation of an institution into a more powerful one as compared to another shows his ability to create hurdles in the efforts of civilian government for his subordination.

Disagreement further aggravated the situation when the elected government of Benazir Bhutto announced that the Chairman Joint Chiefs of Staff Committee (JCSC), Admiral Iftikhar Ahmad Sirohey will retire after completing his three-year term in office as Admiral (i.e., 1986-1989).¹ The military establishment was of the view that Admiral Iftikhar Ahmad Sirohey was appointed as Chairman, JCSC in November 1988. Since the tenure of this post was three years, therefore he will be retiring in November 1991. The military also took it as an interference in their internal affairs. Begum Nusrat Bhutto, the senior minister issued a public statement which further aggravated the situation. The Eighth Constitutional Amendment provided that the power of appointing the Chairman, JCSC will be exercised by the President. However, Benazir Bhutto was making her efforts to exercise it. Finally, President Ghulam Ishaq Khan opted to support the military point of view which embarrassed Benazir Bhutto. In fact, Benazir Bhutto wanted to promote General Mirza Aslam Baig as Chairman JCSC. This would have helped Benazir Bhutto to appoint a new Army Chief possibly of her own choice.¹ However, since the power to appoint services chiefs was a prerogative of the President and Ghulam Ishaq Khan was aware of his exclusive powers, Benazir Bhutto's plan could hardly materialise.

The controversy between Benazir Bhutto's government and the military continued with the emergence of a case of Lt. General Alam Jan Mahsud, Corps Commander Lahore. Benazir Bhutto was again making some efforts for securing extension in the service of Lt. General Alam Jan Mahsud so that he could be promoted to the rank of a four-star General.¹ The prime minister hoped that Lt. General Alam Mahsud would be able to replace General Aslam Baig after his retirement in August 1991. The Army Chief General Mirza Aslam Baig simply ignored Benazir Bhutto efforts in this regard and posted Lt. General Ashraf Janjua as Corps Commander Lahore, thus leaving Lt. General Alam Mahsud with no option but to retire in a traditional way and as a professional soldier on July 18, 1990, the due time of his retirement. Benazir Bhutto sought support of Washington through Elizabeth Johns, Deputy Chief of Mission at the United States Embassy, however, the United States avoided issuing any public statement in this regard.¹ It proves the reliance of politicians on United States support for their stay in the corridor of power.

Right after the controversy over the affairs of Admiral Iftikhar Ahmad Sirohey, Benazir Bhutto was a challenge to the autonomy of the military. She was taken as an unreliable politician by the military thereby compromising her image as a national leader. Her efforts for normalisation of ties with India when Rajiv Gandhi was on official visit to Pakistan in December 1988, further increased the mistrust. The intelligence agencies were monitoring Benazir Bhutto's dealings with Prime Minister Rajiv Gandhi. As far as the security of Pakistan was concerned, the information provided by the intelligence agencies regarding their mutual discussion was enough to prove her as an unreliable person in the opinion of the army commanders. Later, Benazir Bhutto was blamed to have provided secret data about the Sikh militants to the Indian government who were allegedly involved in Khalistan Movement and had developed connections with the ISI. Therefore, the lack of confidence became one of the reasons to keep her out of the controlling mechanism of nuclear program.¹ Later, Benazir Bhutto had accepted helping India to counter Khalistan Movement. The opposition had also been accusing Benazir

Bhutto of having given an understanding to the United States on opening of Pakistan's nuclear installations for inspection. However, during her election campaign, Benazir Bhutto had reiterated that Pakistan would not accept any unilateral restriction on its nuclear program.

Till November 1989, the challenges prompted the Army to implicitly support the move for a no-confidence motion against Benazir Bhutto government. The failure of the attempt to remove Benazir Bhutto did not end the disapproval of military for her government. Moreover, the resurfacing of the Kashmir issue in early 1990 and the reluctance with which the government of Benazir Bhutto raised the matter internationally further alienated the military. It was clear that the issues of Indo-Pak relations, the issue of Kashmir, foreign affairs and nuclear program were the major areas where the military showed a high concern. These were the main factors behind the interference of military in politics. The gulf had widened by August 1990 to such an extent that the military initiated the move to remove Benazir Bhutto government. Although, the Army Chief Mirza Aslam Baig wanted to take over the government, but the situation did not favour him. The President and the Army Chief had allowed Benazir Bhutto to rule but were continuously influencing her decisions. Complete information was not shared with Benazir Bhutto about the nuclear program and her foreign visits were regularly monitored.¹

Benazir Bhutto had claimed that she received no briefing on the nuclear issues except those given by the United States. Robert Oakley updated her as much as the United States knew about the nuclear program of Pakistan. In fact, Benazir Bhutto had asked for briefing on the nuclear issue after assuming power which was not materialized. Benazir Bhutto decided to hold a meeting with Dr. Abdul Qadeer Khan, the head of Kahuta Atomic Project as well as Pakistan Atomic Energy Commission (PAEC). General Mirza Aslam Baig, while knowing about this strategic meeting, hastily made a telephonic call to Benazir Bhutto. Benazir Bhutto, feeling the sensitivity of the matter, showed prudence to invite both the President and the Army Chief for discussion on the framework of the command and control mechanism of nuclear program. Benazir Bhutto used to claim that PPP was the pioneer of the nuclear policy of Pakistan.¹ Prior to this strategic meeting, President Ghulam Ishaq Khan was the only in-charge of the nuclear program, and General Mirza Aslam Baig and the Prime Minister were out of the command and control system. This mechanism was workable during General Ziaul Haq regime since he had been the President as well as the Army Chief. In the post-Ziaul Haq period, the initiative of Benazir Bhutto provided this rare opportunity to General Mirza Aslam Baig for entering in the command and control system of the nuclear program.

In the presence of a powerful President and Mirza Aslam Baig, the government could hardly take any independent decision. Despite repeated demands of PPP provincial government's coalition partner ANP to fulfil the commitment, Benazir Bhutto could not replace the Governor of Khyber Pakhtunkhwa (then NWFP). In fact, he was a retired Brigadier from Army and was appointed by General Ziaul Haq.¹ Ghulam Ishaq Khan and Mirza Aslam Baig proved to be the real hurdles for the elected government of Benazir Bhutto to replace him.¹ While expressing his distrust of Benazir Bhutto government, General Mirza Aslam Baig said that he had shown patience on three different occasions.

One, when he allowed the transfer of power to elected government and refrained from military coup after President General Ziaul Haq died in the plane crash. Second, when Prime Minister asked him for the acquittal of those Army officers who were dismissed after the death of Z. A. Bhutto, being charged for involvement in the discipline issue. Third, when Benazir Bhutto replaced the serving DG ISI by a retired Lt. General without his consultation.¹ Surprisingly, the statement of General Aslam Baig proves that if the Army Chief allows a civilian government to continue, it is considered as a favour with the politicians on his part.

6.1.3 Benazir Bhutto and Ghulam Ishaq Khan Relations

The death of President Ziaul Haq in August 1988 paved the way for the emergence of a “troika.” Ghulam Ishaq Khan, the Chairman Senate had taken over immediately as Acting President and was later elected to a full term as the President of Pakistan in December 1988. It was Benazir Bhutto's vision of conciliation politics to support acting President Ghulam Ishaq Khan in the December 1988 presidential elections. PPP had the political capacity to take a leadership role in fostering the politics of conciliation in Pakistan. General Mirza Aslam Baig had assumed the office of the Army Chief and, following the November 1988 general elections, the President asked Benazir Bhutto to form a coalition government. In the unique political system of Pakistan, there were now three centres of power; the President, the Army Chief and the premier. The President and the Army Chief were exercising more powers vis-à-vis the Prime Minister. Army Chief had more powers due to the traditionally dominant role of the Army in the politics and the President who had acquired sweeping powers through the Eighth Constitutional Amendment. Having served as a bureaucrat, finance minister, Chairman Senate, and now the President of Pakistan, Ghulam Ishaq Khan revised his viewpoint on the use of presidential powers. He took strong positions on several issues such as the issue of Afghanistan and the nuclear program of Pakistan.

President Ghulam Ishaq Khan also insisted that the prime minister should inform him of all decisions that do not necessarily fall under the jurisdiction of the president. It was considered as an encroachment upon the powers of the prime minister that was fully resisted by the government of Benazir Bhutto which received 323 memos over twenty months on wide-ranging issues.¹ Benazir Bhutto announced in her first press conference after taking oath of office as prime minister, that the Eighth Constitutional Amendment will be annulled. This clearly meant that presidential powers will be curtailed. However, Ghulam Ishaq Khan was reluctant to be made a titular head of state like that of Chaudhry Fazle-Ilahi.¹ Therefore, he always remained suspicious about the intentions of Benazir Bhutto, thereby widening his differences with the elected government. Moreover, since the battle of the government against Nawaz Sharif raged on, Benazir Bhutto's government could not pass any significant piece of legislation. The president also showed reluctance in signing the ordinances declaring that an elected government should pass the laws through the legislature.

The first ever clash which increased the differences between Ghulam Ishaq Khan and Benazir Bhutto was in the summer of 1989 when the government tried for the removal of Admiral Iftikhar Ahmad Sirohey, the Chairman JCSC. The Secretary of Defence, who appears to be the top civil servant in the Ministry of Defence, passed on the information to the President about the intentions of Benazir Bhutto before she could summon Admiral Iftikhar Ahmad Sirohey. As the military opposed the move, Ghulam Ishaq Khan came up with an insistence that dismissal as well as appointment of services chiefs was his prerogative under the Constitution. On the other hand, Benazir Bhutto insisted that she could dismiss the generals and, therefore, the battle raged on in the press for several weeks. Both the president and Benazir Bhutto used journalists in their pay to push their line. The military commanders feared that if Benazir Bhutto succeeded in doing so, a precedent would be set by which she would move out all those officers who she was suspicious of.

The differences between Ghulam Ishaq Khan and Benazir Bhutto further increased in 1989 on the question of who to appoint the Chief Justice of Pakistan and the Chief Election Commissioner. The President held the view that the Constitution has granted him the power of appointment of the Chief Justice, and other judges in consultation with the later. However, Benazir Bhutto argued that the President would be bound to accept the recommendations of the elected premier. The President decided for filing a reference in the Supreme Court so that the issue could be resolved. However, the issue got resolved when the prime minister consented to the appointment of Mohammad Afzal Zullah as Chief Justice on December 9, 1989. Similarly, Benazir Bhutto also agreed to the insistence of the President that Justice Naeem Uddin Ahmed would continue as the Chief Election Commissioner.

The Prime Minister's major test came on November 1, 1989 when a no-confidence motion against her government came up for vote which was moved by the combined opposition in the National Assembly. PPP had been surprisingly caught by the IJI through a series of clever parliamentary procedures. The IJI's no-confidence motion had carried the signatures of 86 members of the House, a number far more than that required under the rules of the House. Moreover, only one hundred and nineteen (119) MNAs in the two hundred and thirty-seven (237) members National Assembly were needed to bring down Benazir Bhutto's government. However, Benazir Bhutto moved quickly without any panic to secure the votes needed to defeat the move of no confidence. Benazir Bhutto had good reason to believe her government could be toppled. Therefore, Benazir Bhutto was reported to have confided to her close aides that she would willingly sit in the opposition benches if defeated in the National Assembly.

In fact, the no-confidence motion was initiated after several controversies arose Benazir Bhutto and Ghulam Ishaq Khan regarding the management of governmental affairs, especially the transfer, promotion and replacement of high ranking government officials. These personal conflicts led some of Benazir Bhutto's supporters to believe that President Ghulam Ishaq Khan was siding with the IJI, had given his acquiescence to the no-confidence motion, and was hardly a neutral figure. Despite these questions concerning the role of the president, the other major actor, the Army Chief General

Aslam Baig, being one of power troika, had repeatedly reiterated his support for the democratic process and had refused to take sides. In this regard, the request of Nawaz Sharif for a meeting with the Army Chief just before the no-confidence vote, was declined to maintain fairness and neutrality. General Mirza Aslam Baig insisted that the military had ceased to meddle in political affairs of Pakistan.

Despite the efforts and political bargaining of IJI, the efforts of opposition to remove Benazir Bhutto could not succeed. As scheduled, on November 1, 1989, following a two-and-a-half-hour debate, the no-confidence motion was put to vote in the House. While receiving only 107 of the 119 needed, the IJI-led opposition fell twelve votes short of its goal. Benazir Bhutto's precarious majority in the National Assembly sustained when the speaker of the National Assembly, Meraj Khalid, announced defeat of the move. Benazir Bhutto was present in the House throughout the proceedings. She thanked the House for providing the opportunity to continue and assured the parliamentarians that PPP government would live up to their expectations and aspirations of the nation.

The failure of the no-confidence move left Benazir Bhutto's authority as prime minister intact. However, it also increased the already widening gulf between Ghulam Ishaq Khan and Benazir Bhutto. This really proved to be a clash of personalities that intensified the ongoing struggle between the forces representing the administrative state and those speaking for the political state. In this scenario, the military controlled the outcome and had opted for the status quo-i.e., the democratic process to continue. However, the later developments proved to be otherwise, which will be discussed in the following write-up.

6.1.4 Dismissal of Benazir Government and the Decision of the Supreme Court

On July 21, 1990, the top military command in its Corps Commanders' meeting concluded that Benazir Bhutto government had crossed the limits. They decided that the government of Benazir Bhutto was not tolerable anymore and, therefore, the military would support any anti-government move by the President.¹ President Ghulam Ishaq Khan, using his powers of 58(2)(b) under the Eighth Constitutional Amendment, dismissed the elected government of Benazir Bhutto and dissolved the National and Provincial Assemblies on August 6, 1990, with an announcement of fresh elections scheduled for October 1990. The Eighth Constitutional Amendment authorized the President of Pakistan to dissolve the national and provincial assemblies and dismiss the sitting elected government. Therefore, this provision enabled the military to rely on Ghulam Ishaq Khan for the dismissal of Benazir Bhutto government. The charges of corruption, nepotism, inefficiency, violations of the Constitution, maladministration, financial decline, bad

law and order especially in Sindh and many other issues were declared as the reasons for dismissing the PPP government.¹

Immediately after the dismissal and dissolution orders, the military took control of all important buildings in Islamabad, the Capital of Pakistan, in a coup-like manner. Army Chief, General Mirza Aslam Baig commented that both Benazir Bhutto and Muhammad Khan Junejo were kept in the fool's paradise by their respective close aides who had developed a circle of ignorance around them thereby keeping them away from the ground realities.¹ Two days after the dismissal orders, Benazir Bhutto addressed a press conference in Karachi and blamed the Military Intelligence and the Army as main forces behind the dismissal of her government.¹ Furthermore, Benazir Bhutto declared that both of these institutions pressurized the President to dismiss her government and dissolve the National and Provincial Assemblies and that in otherwise case the military would have taken over the government. Benazir Bhutto also blamed the military of backing the IJI for launching a no-confidence move against her government in the National Assembly in November 1989. Later, Benazir Bhutto pressed for her demand that the role of the military and the ISI needs to be clearly described and that the military should be kept out of the politics.¹

The DG, MI General Asad Durrani contended that the decision to dismiss Benazir Bhutto government was that of the President and not that of the military. In fact, it was the General Asad Durrani who informed the Army Chief about the planning for the dismissal of the government and advised him to meet the President for confirmation of this information. After meeting with the President, General Aslam Baig conveyed to General Asad Durrani that the information was correct and that the President had decided to go ahead with his plan.¹ However, the extraordinary and frequent meetings of General Mirza Aslam Baig with Ghulam Ishaq Khan coupled with his later statements confirmed that the Army Chief played an active role in the decision of the President to dismiss the elected government. It also proved that the President had been used by the Army Chief and that he could not take any decision independently on the political issues which was a clear violation of the Constitution.

The dismissal as well as the dissolution order of the President was challenged in the High Courts of the country. Only the Lahore High Court received five petitions. Hearing the petitions in detail, the Lahore High Court gave a unanimous verdict that the ground reasons heavily weighted with the President of Pakistan to dissolve the elected government and the National and Provincial Assemblies. The judges held that president's orders had direct relation with the pre-conditions clearly prescribed in the Article 58(2)(b) under the Eighth Amendment. Therefore, the judgment of Lahore High Court eliminated the hopes that Benazir Bhutto government could be restored under the 1973

Constitution. The Court further held that a recourse to the electorate had become necessary after the dissolution order of the assemblies by the President.

Petitions were also filed to challenge the order of the President regarding dismissal of Benazir Bhutto government in the Sindh High Court. A five-member bench was formed which was headed by Chief Justice Sajjad Ali Shah for hearing the petitions on September 24, 1990. However, the Governor of Sindh took-off for Saudi Arabia on September 19, 1990 to perform Umrah.¹ Therefore, Chief Justice was accordingly assigned with the responsibilities of acting Governor of Sindh. In fact, these arrangements were carried out for keeping the Chief Justice out of the bench which was formed to hear the petition challenging the order of the President issued for dismissal of Benazir Bhutto government. The initially planned visit of Governor of Sindh was three days only. However, the tour was given an extension claiming the reasons of his illness in this regard. As a result, the Governor stayed abroad and didn't return until the petitions were disposed-off.¹ The dissolution of Benazir Bhutto government was also challenged in the Peshawar High Court which declared that the decision of President Ghulam Ishaq Khan was in accordance with his powers under Article 58(2)(b) of the Constitution.¹

An appeal was filed against the decision of Lahore High Court in the Supreme Court titled: Ahmed Tariq Rahim vs Federation of Pakistan. Hearing the case, the Court in its judgement upheld the verdict of Lahore High Court thereby granting legality to the dismissal order for Benazir Bhutto government and dissolution order for the National Assembly.¹ In fact, the President and his team had analysed the Supreme Court judgment of October 5, 1988 regarding the dismissal of Muhammad Khan Junejo government. Therefore, besides the charges of corruption etc., President Ghulam Ishaq Khan also used other grounds for the dissolution of Benazir Bhutto government. These reasons were the confrontational politics between the federal and two provincial governments (Punjab and NWFP), inability in forming and activating constitutional bodies like the National Finance Commission and the Council of Common Interests coupled with the continuity of ethnic strife in the country.¹ These allegations amounted to the constitutional impasse and therefore, the Courts ruled in favour of Ghulam Ishaq Khan.

6.2 Elections of 1990 and the Premiership of Nawaz Sharif

Ghulam Mustafa Jatoi, a seasoned politician and leader of Combined Opposition Parties in National Assembly was appointed as the caretaker Prime Minister to conduct fresh elections.¹ The interim government performed in a highly partisan manner and used the governmental machinery to support the IJI during these elections. The support of the President with IJI could be easily seen from his pre-election address to the nation on national TV.¹ One of the factors which contributed to the success of IJI was that Benazir Bhutto adopted a defensive attitude during her election campaign. On the other hand, Nawaz Sharif showed capability in taking full benefit of this issue and also presented his person as a better candidate for the office of the premier.¹ In the post Ziaul Haq period, the military continued to support Nawaz Sharif as a measure to counterbalance the popularity of Benazir Bhutto

and the DG ISI, General Hameed Gul had helped the IJI to design its campaign for the 1988 elections.¹ During General Ziaul Haq regime, Nawaz Sharif was supported by Ex. DG ISI General Jilani, then Governor of Punjab to become Finance Minister of Punjab. Later, he became Chief Minister of Punjab during the first term of Benazir Bhutto as prime minister and was also patronised by Ghulam Ishaq Khan.¹ Above all, the backing of ISI and the military was an important factor in the success of IJI.

The ISI under Major General Asad Durrani became active during the elections of 1990, to block the PPP access to power. The Army Chief also supported the IJI and, later, admitted in the Supreme Court of Pakistan that the ISI had distributed sixty million rupees among the political parties.¹ The statement of General Mirza Aslam Baig in 1993 proved that the elections of 1990 were grossly rigged. To him, both the winner and losers did not know about the angels who had played the trick and disappeared.¹ During second term of Benazir Bhutto government, DG ISI, Major General Asad Durrani had to submit an affidavit to the National Assembly in June 1996 through Naseerullah Babar, the then Federal Minister for Interior. The affidavit confirmed distribution of money by the ISI among the politicians, political parties and journalists opposed to the PPP and to the election cell of the President House.¹ PPP and Tehrik-e-Istiqlal had been in an electoral alliance during the general elections of 1990 called Pakistan Democratic Alliance (PDA).¹ Therefore, Asghar Khan wrote a letter to the Chief Justice of Pakistan in June 1996 that the ISI has used money during the elections. The decision to use money was of the President and the Army Chief knew well about it. The Chief Justice converted the letter into Human Rights Case 19 of 1996.¹

The use of money cannot be justified under the existing laws in Pakistan for securing the loyalties of political parties and other individuals by any of the state institutions. Unfortunately, there is no system of accountability for the military in Pakistan in its financial accounts even the matters of embezzlements. The three-armed forces have an internal system for audit purpose which is out of control of the elected government and the parliament.¹ General Mirza Aslam Baig gave a clarification that he had shared the information with his successor, General Asif Nawaz Janjua and the Prime Minister Nawaz Sharif about the use of funds by the ISI. However, this statement was issued after one and a half year of the death of General Asif Nawaz Janjua.¹

The preparations of IJI for the elections of 1990 along with the active support of the President and the military resulted in a clear majority for them in National Assembly. The IJI secured majority, winning one hundred and six (106) seats in the National Assembly out of two hundred and thirty seven (237) and emerged as a single largest party.¹ The PPP along with other political parties that had jointly contested the 1990 elections under an alliance named Pakistan Democratic Alliance (PDA) could secure only forty five (45) seats and raised its voice about the alleged rigging in the elections.¹ Nawaz Sharif, the leader of Pakistan Muslim League which was an important component of the IJI, was sworn in as Prime Minister by securing majority in the National Assembly after ten days on November 6, 1990. By the time, he emerged to be the most secure and powerful Prime Minister since the mid-1970s having a broader base of political support.¹

6.2.1 Relations with General Mirza Aslam Baig and General Asif Nawaz Janjua

Nawaz Sharif, while taking the PPP's experiences with the military, started with a careful handling of the military matters. Being a product of General Ziaul Haq regime, Nawaz Sharif enjoyed good relations with both ISI and the military. Therefore, unlike Benazir Bhutto, Nawaz Sharif initially maintained good working relations with the military. However, Nawaz Sharif's working relations with the military did not always run smoothly. Differences arose slowly and gradually due to some issues. The first controversy between the elected government and the Army Chief occurred during the Gulf War¹ on the question of the official standpoint of Nawaz Sharif government. Nawaz Sharif, in consultation with General Aslam Baig, sent five thousand troops to Saudi Arabia.¹ But the elected government refused for participation in any military expedition outside its borders. However, later, while commenting on the opinion of people especially the religious circles against the United States and in favour of Saddam Hussein, the Army Chief openly questioned Nawaz Sharif government's Gulf War policy and his decision to increase the level of Pakistan's commitment to the multinational force.¹ These statements were in contradiction to the national policy of the elected government thereby provoking anti-government sentiments in the country. As the Army Chief had clearly opposed the United States led strategic plans for the liberation of Kuwait, the Kingdom of Saudi Arabia asked the government of Pakistan for the withdrawal of its troops.¹

General Mirza Aslam Baig issued some public statements regarding the increasing threat of war with India in July 1991. However, the elected government refused to see an eye to eye regarding seriousness of the security situation as portrayed by General Mirza Aslam Baig. The relations worsened to the extent that the people including the government circles expected an overthrow of the government of Nawaz Sharif by General Mirza Aslam Baig.¹ However, without taking any such action, General Mirza Aslam Baig retired in August 1991 and the rumours about the dismissal of elected government died down. Anyhow, this was an unusual situation because the Army Chief had no right to publicly criticise the public policy of an elected government. Being head of an institution, which is constitutionally subordinated to the civilian government, General Aslam Baig was bound to follow, and not to dictate the civilian government.

General Mirza Aslam Baig's successor, Lt. General Asif Nawaz Janjua did not support Nawaz Sharif consistently probably because the latter had not supported his appointment as Army Chief. The prime minister's choice was Lt. General Shamim Alam Khan, who stood as the senior most general. However, Ghulam Ishaq Khan had been in favour of the appointment of Lt. General Asif Nawaz Janjua as next Army Chief.¹ The prime minister thought that appointment of the Army Chief was his discretion but the president declared it his exclusive domain. Ghulam Ishaq Khan wanted to appoint someone with a non-political stature as a strong Army Chief and promoted General Shamim Alam Khan as Chairman, JCSC. However, it is believed that at the far end of his tenure in 1991, General Mirza Aslam Baig was thinking about toppling of the government of Nawaz Sharif. However, just three months before his retirement, Ghulam Ishaq Khan decided to promote Lt. General Asif Nawaz Janjua as the

new Army Chief. After taking oath of his office, General Asif Nawaz Janjua announced a policy of non-intervention of the Army in the politics during his address to the officers and soldiers.¹ This showed the departure of the military from the policy of adventurism in the political affairs, and declared a professional role for the military.

General Asif Nawaz gave a clear signal of following a non-interventionist policy in the political affairs of the country. However, he had been open for the meetings with the politicians and used to enjoy listening current political issues. Some of the politicians both in the government and opposition, including few of the ministers from Muslim League and the ruling alliance¹ would share their grievances with General Asif Nawaz. They were seeking support of the Army Chief for bringing a possible change in the politics through helping them to get rid of Sharif brothers. The Army Chief refused to extend his support in this regard and expressed that to seek a signal from the Army in this regard would mean that they will have to wait for a longer period. It would be good if the politicians handle their issues themselves. However, General Asif Nawaz Janjua wanted only 'an in-House change' to replace Nawaz Sharif government, and not to impose martial law.¹ However, the prime minister's discomfort because of General Asif Nawaz Janjua was justified because in democracy, the Army Chief is never empowered to either prepare or support such moves.

To create a good working relationship with the Army Chief, Nawaz Sharif invited General Asif Nawaz Janjua to the family patriarch. Father of the prime minister, Mian Sharif, asked General Asif Nawaz Janjua to deal with both Nawaz Sharif and Shahbaz Sharif as his younger brothers. However, General Asif Nawaz showed no flexibility for such informality of their father. Army Chief also called the Corps Commander, Lahore for explanation immediately after receiving a report about a lucrative license granted for an industrial unit by Nawaz Sharif to his brother. Later, the attempt of prime minister by presenting a BMW was also considered by the Army Chief as an effort of bribery and mortifying his office in public. No doubt, Army in Pakistan has been a strong self-contained institution and always resistant to the external interferences. However, still Nawaz Sharif sent list of officers for promotion to the Army Chief. The practice was not encouraged by General Asif Nawaz Janjua recommending promotion of the brothers of Malik Naeem and Chuadhry Nisar Ali Khan only and that also on the professional grounds.¹

General Asif Nawaz Janjua had been feeling upset at many of Nawaz Sharif's moves. Most significant of these moves were his attempts to create rifts within the military. The conversation of Nawaz Sharif with Brigadier Imtiaz Ahmed, the then Director General of Intelligence Bureau (IB) and other confidants like Chaudhry Nisar Ahmad were also reported to the Army Chief. Responding to the grievances of Nawaz Sharif against the Army Chief, Brigadier Imtiaz Ahmed, referring to General Gul Hassan had said that he would make General Asif Nawaz Janjua like him. This information offended General Asif Nawaz Janjua to such an extent that he shared the report in the Corps Commanders meeting. General Asif Nawaz Janjua and Prime Minister Nawaz Sharif were now in personal rivalry.

Nawaz Sharif asked DG, ISI General Asad Durrani about the proceedings of Corps Commanders' meeting. However, General Asad Durrani did not share what was discussed in that meeting with a view not to increase the tension between General Asif Nawaz Janjua and Nawaz Sharif. However, the prime minister lost trust in General Asad Durrani and immediately decided for his replacement. Thus, another confrontation emerged when Nawaz Sharif unilaterally decided the appointment of Lt. General Javed Nasir as DG, ISI. The new ISI Chief was a conservative Islamist and General Asif Nawaz Janjua being a liberal did not want him to be the head of ISI. Moreover, the appointment of DG, ISI was the power of the prime minister, however, a list of three was to be provided by the Army Chief.¹ The reaction of Army Chief General Asif Nawaz Janjua was the same as shown by General Mirza Aslam Baig on the appointment of General (Retd.) Shamsur Rehman Kallu as DG, ISI by Benazir Bhutto.

Just before the formation of Nawaz Sharif government in 1990, United States included Pakistan in the watch list of the countries who were accused of state sponsored terrorism. The defence relations were suspended by the US including the military and economic assistance to Pakistan under the Pressler Amendment¹ due to the nuclear issue. The military establishment had been highly sensitive about Pakistan's nuclear policy. However, they had also concern over Pak-US relations and were interested in obtaining weapons and military equipment. Therefore, the military had an expectation from the elected government that it would be using diplomatic channels for resolving the issues.¹ The major issues included the US concern over Pakistan's nuclear policy, threat to be declared as a terrorist state, Afghan policy and Indian response due to mujahedeen infiltration in Indian Occupied Kashmir.¹ The Army Chief visited the United States and maintained the goodwill at military to military level. However, the military was not satisfied with the way Nawaz Sharif government was handling Pakistan's foreign policy especially the Pak-US relations.

Prime Minister Nawaz Sharif did not enjoy smooth relations with the military as harmony between the two didn't last long. However, Nawaz Sharif had always been sensitive and showed carefulness in questioning the role of the military or that of the Army Chief openly. As a result, this cautionary attitude denied the military any chance to ask the President Ghulam Ishaq Khan to repeat his action of August 1990. The first difference developed with the Army Chief over the transfer of Lt. General Hameed Gul, Commander II-Corps Multan (former DG ISI). In fact, Hameed Gul was an anti-American and there was a threat for Pakistan to have been declared as a terrorist state by the US. Therefore, prior to his official tour to the United States; General Asif Nawaz Janjua wanted to side-line him as a good gesture to the United States. Before leaving in mid-1991, General Asif Nawaz Janjua ordered the transfer of Lt. General Hameed Gul to the Heavy Industries Taxila as DG.

Being a project of Defence Production Division, this position was an out of army cadre posting. He talked to General Asif Nawaz along with two written requests, that if not a Corps Commander, he should at least be posted to GHQ with any unattractive position.¹ The Chief of General Staff (CGS) Lt. General Furrakh Khan made a telephonic call to General Asif Nawaz Janjua about the

refusal of Lt. General Hameed Gul to obey the order. General Asif Nawaz Janjua ordered to place his services on the disposal of Defence Ministry and if he still refused, he must be retired from the Army with immediate effect.¹ When the Army Chief and the Prime Minister came back from foreign tour, the latter sent him a message not to resign. However, Lt. General Hameed Gul signed his retirement orders the following day. Nawaz Sharif extended his support because Lt. General had supported the IJI against the PPP that ultimately favoured Nawaz Sharif to become prime minister.¹

On the request of Nawaz Sharif government, the Army launched an operation against dacoits, anti-social elements and militants having ethnic grievances in the rural areas of Sindh, a stronghold of PPP. However, the Army soon realized that operation was launched for political reasons, deciding an expansion of the operation into the urban areas of Sindh. Thus, Army had to deal with the MQM which was in alliance with the government of Nawaz Sharif.¹ MQM asked the prime minister to play his role in stopping the operation in its area, however, the central government could do nothing in this regard. The situation badly affected the relations between IJI and MQM. Therefore, the close aides of the premier suggested the removal of the Army Chief. Later, when Nawaz Sharif was removed from power, he revealed to the media that the Army did not comply with the instructions of the prime minister regarding the operation in Sindh.¹

The tense relations between Nawaz Sharif and General Asif Nawaz Janjua brought the latter closer to President Ghulam Ishaq Khan. Another reason was the fear, General Asif Nawaz Janjua had about his possible removal by the prime minister. Therefore, he decided to seek some assurance from the president in which he was successful through Shahid Javed Burki, a common friend of both. Holding a meeting, both Ghulam Ishaq Khan and General Asif Nawaz Janjua developed 'good rapport'.¹ The relationship also resulted in enhancing confidence of Ghulam Ishaq Khan for dismissing the elected government. The government of Nawaz Sharif did not operate against the back-drop of a hostile military; on the contrary, Nawaz Sharif owed his rise to prominence to the military rule of General Ziaul Haq. However, when the Army Chief was just getting seriously worried about the government of Nawaz Sharif, he quite suddenly died on January 8, 1993.¹

6.2.2 Nawaz Sharif and Ghulam Ishaq Khan Relations

When Nawaz Sharif assumed power in October 1990 as prime minister, it was expected that the relationship between Ghulam Ishaq Khan and that of the newly-elected premier would remain cordial. The expectations were high because both Ghulam Ishaq Khan and Nawaz Sharif were the legacies of General Ziaul Haq military rule. Moreover, Ghulam Ishaq Khan had consistently supported Nawaz Sharif as Chief Minister Punjab during the Benazir Bhutto government. Initially, these expectations proved right; and during the Gulf War, Ghulam Ishaq Khan supported Nawaz Sharif's Gulf War policy against the criticism of General Mirza Aslam Baig. However, as he was confident that a clear majority in the National Assembly had placed him in a stronger position than his predecessor Benazir Bhutto, the prime minister started taking actions independently.

The troubles of Nawaz Sharif started soon when he developed serious tensions with the president. Nawaz Sharif was ignoring the ground realities that the office of the prime minister was expected to make a compromise and to play, happily and voluntarily, a subordinate if not servile role. Moreover, his office was also expected to allow the president in administering the state affairs without any advice or assistance from the prime minister and control of the parliament.¹ Their differences started in early 1991 when Nawaz Sharif sacked Ijlal Haider Zaidi and side-lined Sahibzada Yaqoob Khan, Roedad Khan and Aziz Munshi.¹ The efforts of Nawaz Sharif to establish an independent identity as a public representative and an all-powerful prime minister had been an alarming issue for the president. Ghulam Ishaq Khan got worried by the growing popularity of Nawaz Sharif. However, despite these serious irritants, the power sharing mechanism was working well.

The president had ignored recommendations of Nawaz Sharif for the Army Chief's appointment, not only of General Asif Nawaz Janjua, who died suddenly in January 1993, but also of his successor, General Abdul Waheed Kakar. Nawaz Sharif was aware that the Army would be continuing to play an effective and dominant role in the political system of Pakistan. Therefore, he wanted a pro-government Army Chief to replace General Mirza Aslam Baig in August 1991. However, Nawaz Sharif got disappointed when Ghulam Ishaq Khan appointed General Asif Nawaz Janjua as Army Chief. Although unhappy with the appointment, Nawaz Sharif had reportedly tried to develop good working relationship with General Asif Nawaz Janjua by offers and opportunities.¹ President Ghulam Ishaq Khan resented this show of independence and confidence of Nawaz Sharif thereby ignoring the policy initiatives taken by the later.

The relationship between the president and the prime minister became so worse that by the end of 1992 President Ghulam Ishaq Khan was looking for an alternative of Nawaz Sharif. Obviously, Benazir Bhutto offered such an alternative. The decision of Benazir Bhutto to go on long march against the government of Nawaz Sharif in December 1992 received tacit approval of the president. However, the way the prime minister foiled attempts of Benazir Bhutto changed the whole scenario. Realizing the impossibility of toppling the elected government, Benazir Bhutto started reconciliation with Nawaz Sharif. As a first gesture, Benazir Bhutto showed willingness in chairing the Foreign Affairs Committee of the National Assembly but soon left for London.¹ Asif Ali Zardari was also granted bail, after serving his two years in jail, for joining Benazir Bhutto in London who had to deliver the third baby.

Nawaz Sharif was convinced that his clear majority in the Lower House and his reconciliation with Benazir Bhutto would be useful in strengthening his position against the president. Therefore, Nawaz Sharif announced on the floor of the Senate in February 1993 to review the Eighth Constitutional Amendment and repeal Article 58(2)(b), which granted power to the president for dissolving the National Assembly.¹ The President lost all patience and decided to remove Nawaz Sharif by any means. Therefore, the president started preparing ground for it by encouraging some members of Parliament to resign from the National Assembly. The death of Muhammad Khan Junejo on March

18, 1993 provided an opportunity to anti-Nawaz faction in Muslim League for resignations with a clear support from the president.¹ The president also sent his close aides to contact Benazir Bhutto in London, who was given a tough time since the dismissal of her government. To make the ouster of Nawaz Sharif possible, the government of Benazir Bhutto previously declared as corrupt by the President on August 6, 1990, was now given a clean chit. The cases which were pending in the courts against Benazir Bhutto and Asif Ali Zardari were withdrawn. The departure of Benazir Bhutto, occurring soon after the death of Asif Nawaz Janjua, had brought drastic changes in the polity. Although, the new Army Chief was chosen by Ghulam Ishaq Khan, his decision of non-interference in the politics changed the “troika” into a “semi-diarchy” once again.

An open clash between the president and the prime minister came into public for the first time over the issue of appointment of the new Army Chief when General Asif Nawaz Janjua died.¹ Once again, both Nawaz Sharif and Ghulam Ishaq Khan took stand on the appointment of Army Chief trying to install a person of their own choice to secure his support in their political differences. The prime minister wanted to place a general who should at least, perform as a neutral person if not supportive to his government, and General Ashraf Janjua, then Corps Commander Lahore was his favourite.¹ However, the power to appoint the Army Chief was vested in the president under the Constitution. Considering Nawaz Sharif's intentions as a direct threat to his presidential powers, Ghulam Ishaq Khan effectively used his constitutional privilege to appoint the Army Chief. Within 24 hours of a statement by the Prime Minister that the appointment of the new Army Chief would take some time, the president, without consulting the prime minister named Lt. General Abdul Waheed Kakar to be the new Army Chief (1993-1996), superseding four senior generals on January 11, 1993.¹ What is more interesting is that the prime minister was informed just a few minutes prior to the appointment ceremony of the Army Chief.

Expressing his displeasure on the appointment of the Army Chief, Nawaz Sharif declared that if we have opted for a parliamentary form of government, adequate powers shall be given to the premier and the parliament. He needs the same powers as that of prime minister of the United Kingdom.¹ His address to the Senate in March 1993, to seek the annulment of the Eighth Constitutional Amendment alarmed the president. Without having two-third majority in the parliament,¹ Nawaz Sharif appointed a parliamentary committee for the review of Eighth Constitutional Amendment. Moreover, despite indications from the president that he wanted another five-year term, Nawaz Sharif government refused to support his re-election in November 1993. A cabinet meeting had held in December 1992 in which Nawaz Sharif forbade the ministers from issuing any statement regarding re-election of the president. To the surprise of Nawaz Sharif, his directives were published in the newspapers by the very next morning.¹ This attitude of Nawaz Sharif resulted in apprehension among the parliamentarians fearing that such clear refusal of the government might provoke Ghulam Ishaq Khan to dissolve the National and Provincial Assemblies prior to the presidential elections. To prevent this from happening, Nawaz Sharif later supported Ghulam Ishaq Khan's candidature for president but by then it was too

late.¹ Moreover, the parliamentarians declared their support to Ghulam Ishaq Khan's candidacy for the next presidential elections but to no avail.

Ghulam Ishaq Khan, as it appears was suggested by his close aides that this declaration of support would likely be dwindling by the second half of the year 1993. Therefore, the time for taking an action was to be prior to June 1993 or never after it. Most probably, the decision had been taken by the end of March 1993 due to the resignation of nearly one-third of Nawaz Sharif's cabinet ministers. On the other side, to undo the Eighth Constitutional Amendment, the prime minister needed the support of Benazir Bhutto. As usual in Pakistan, the opposition political parties never support the government of the day, Benazir Bhutto also looked upon this as a chance of getting revenge from Nawaz Sharif. In fact, Benazir Bhutto recalled the active support extended to the military and the president by Nawaz Sharif for the dismissal of her government in 1990. Since her government was dismissed in August 1990, Benazir Bhutto had severely opposed the Eighth Constitutional Amendment. However, opting for a revenge, she also availed the opportunity and assured Ghulam Ishaq Khan of her support in the presidential elections in case he would promise mid-term elections. Several other political parties also decided to join hands with Ghulam Ishaq Khan, the PPP in the forefront of all. These political developments further increased the level of tension and both Nawaz Sharif and Ghulam Ishaq Khan tried to ignore each other in public meetings.¹

6.2.3 Dismissal of Nawaz Sharif Government and Reinstatement by Supreme Court

Ghulam Ishaq Khan was reluctant to repeat an undemocratic move and earn a bad name by dismissing the elected government once again, as he did by dissolving the one along with assemblies in 1990. Therefore, he asked Roedad Khan, a former bureaucrat and advisor to the President at that time, to signal Benazir Bhutto about his support to a no-confidence motion against the elected government of Nawaz Sharif.¹ However, as IJI was enjoying a clear majority in the parliament, it seemed difficult for the PPP to be successful in this move. The President House issued a press release on April 14, 1993 that the prime minister has been asked to take serious step for resolving national and international issues and report back on the actions taken. In fact, the president had decided to remove the government of Nawaz Sharif and was even ready to bring the PPP back to power.¹ Expecting his dismissal due to manoeuvrings by the president, Nawaz Sharif decided to publicly expose the president. He delivered a harsh speech in his address to the nation on 17 April 1993 against the president. It had been an emotional address wherein the prime minister alleged that the disgruntled politicians were actively involved against his elected government, formulating conspiracies to destabilise his government and had been trying to undo all the good work he had been trying for during the last three years. All this, the prime minister alleged, had been going on under the patronage of the president. Nawaz Sharif also talked about all the pressures, blackmailing, intimidation and conspiracies of the president for forcing him to tender resignation from premiership.¹ Nawaz Sharif ended his speech with some challenging words that he will uphold the principles of democracy, will neither resign nor

request the president to dissolve the National Assembly; and will not take dictation from the presidency as well.¹

The Army Chief got alarmed by this declaration of war from Nawaz Sharif against Ghulam Ishaq Khan. However, the Army Chief had some satisfaction that under the Eighth Amendment, Ghulam Ishaq Khan was capable to handle this scenario and that there would be no need to impose military rule. Therefore, General Abdul Waheed Kakar was ready to extend support of the Army regarding any constitutional measure that Ghulam Ishaq Khan would be taking for solving the issue.¹ Twenty-four hours after the speech of Nawaz Sharif, Ghulam Ishaq Khan addressed a press conference.¹ The president declared that the speech of Nawaz Sharif along with the performance of the elected government shows that this government could no more be continued in accordance with the 1973 Constitution.

Therefore, Ghulam Ishaq Khan issued order for dismissal of Nawaz Sharif government as well as the National Assembly. The grounds for dismissal were corruption, nepotism, maladministration, violation of the Constitution, failure to work effectively with the provincial governments, unleashing a reign of terror against the opposition, and had been unable to conduct investigation of the death of former Army Chief, General Asif Nawaz Janjua.¹ Ghulam Ishaq Khan announced fresh elections on July 14, 1993 and Mir Balkh Sher Mazari was appointed as caretaker prime minister.¹ No doubt, all this was done with the support of the Army Chief as well as the opposition political parties, mainly the PPP. To the surprise of Nawaz Sharif, Asif Ali Zardari was also included in the caretaker government on the very next day of the dismissal order.¹

Here it did not end because a week later, the ousted prime minister filed a reference to the Supreme Court on April 25, 1993 challenging the dismissal order of his government by the president.¹ This time, the Supreme Court under the Chief Justice Nasim Hassan Shah gave its verdict against the Law of Necessity. The historic decision of the Supreme Court not only restored the National Assembly and re-instated Nawaz Sharif government, it also restored trust of the public in the judiciary. Since the first decade of Pakistan, the judiciary had sided with the institutions of military and the presidency in dismissing the elected governments, thus creating an image of a judiciary that had been lacking real independence. These impressions, especially conveyed during Z. A. Bhutto's dismissal and trial, were further reinforced in February 1993 when General (Rtd.) Mirza Aslam Baig claimed that he had personally asked the Supreme Court of Pakistan not to restore the government of Mohammed Khan Junejo back in 1988. No doubt, these claims were made to assert commitment of the Army Chief General Mirza Aslam Baig to democracy. However, it openly acknowledged direct military interference in the political affairs of Pakistan. The claims also implicated the judiciary in interrupting the process of democratization in the country due to military involvement.

Now against the background of this negative imagery, the judges had been at pains to emphasize commitment of the judiciary to decide the case of Nawaz Sharif on merit. On the first day of

hearing the petition of Nawaz Sharif, Chief Justice Nasim Hasan Shah recalled the widely criticised decision by Justice Muhammad Munir which had validated the order of Governor General Ghulam Mohammed in dissolving the first Constituent Assembly of Pakistan on October 24, 1954. Chief Justice Nasim Hasan Shah mentioned that jurists and the nation had not pardoned Justice Muhammad Munir for the decision, thus indicating intentions of the Court not to repeat history by making a similar mistake. During the hearing, the panel questioned the legality of the presidential decision, noting that the President is not authorized to dismiss an elected government and dissolve the National Assembly simultaneously under Article 58(2)(b) which only refers to the dissolution of the National Assembly. The Court also declared that the premier could only be removed under Article 91(5), which entitles discretionary power in the president to dismiss an elected government.

Chief Justice Nasim Hasan Shah categorically stated that the president does not hold subjective authority. Article 58(2)(b) does not confer unlimited authority and the president is constrained from using this power subjectively.¹ The dismissal of an elected government can only be ordered after recourse to other constitutional means. For instance, the judges asked that why the president had not asked the premier to seek a fresh vote of confidence from the National Assembly. The Attorney General of Pakistan informed the Court that the president had intended to summon the National Assembly on April 22, 1993 but the speech of Prime Minister Nawaz Sharif on April 17, 1993 had altered the scenario. The Court declared that the speech could have been the beginning of the impeachment procedures by the government against the president.

The Court also questioned the idea of dismissing an elected government based on unsubstantiated allegations of corruption. Supreme Court pointed out that only actual findings of investigations conducted by the president or references filed in court against the prime minister could be used as “material” to prove corruption charges. The chief justice, for instance, questioned the attorney general's references to corruption and said that all you need to do is hire hundred people, get letters written to the president and by the weekend the prime minister will be sitting at home.¹ Meanwhile, during the hearings, there was the sudden death of the son of Justice Shafiur Rehman, which ultimately raised the possibility that the proceedings may be postponed. However, emphasizing the gravity of the on-going situation and the responsibility that the judiciary owed to the nation; Justice Shafiur Rehman attended the Court on the same day after burying his son, and took active participation in the hearings. Together these actions, questions, and the final decision marked the assertion of the judiciary on its independence and the ability to “correct constitutional irritants” that had allowed the presidents to dismiss the governments and the national and provincial assemblies.

The Eighth Constitutional Amendment had come under heavy criticism from several quarters. The decision of Supreme Court, thus raising the possibility of repealing the Eighth Amendment, brought Pakistan at the verge of a genuine democracy. During the hearings, the Court questioned the underlying concept that the president “operates as a custodian of national interest” and, hence, the validity of presidential ‘interventions’ in the working of an elected government. The Chief Justice

declared that the president can inform the government of his views but then he should leave it to the people to decide in the next elections.¹ The Court also questioned the constitutional validity of the power of the president to appoint the Army Chief and other services chiefs. It was argued that by allowing the president to dismiss the National and Provincial Assemblies, and to be the virtual guardian of security of Pakistan as Commander-in-Chief of the three services, the Eighth Constitutional Amendment had opened the way for decisions that may be dangerous for the security of the state. Interestingly, the criticism of Eighth Constitutional Amendment went beyond the issues of transfer of powers to the parliament, questioning the presidential powers in terms of Islamic identity of Pakistan. It was argued that under the Constitution of Pakistan, the sovereign powers lie with Allah Almighty alone. However, the 8th Constitutional Amendment breaches the basis of the 1973 Constitution giving powers to the President of Pakistan to an extent that he is not answerable to anyone.¹

Thus the presidential power in Pakistan suffered with a great setback on May 26, 1993, when the Supreme Court reinstated the government of Nawaz Sharif and the National Assembly.¹ The full bench of the Court, giving almost a unanimous verdict (10:1), held that the President's order to dismiss the government of Nawaz Sharif and dissolve the National Assembly was unlawful and declared it as 'illegal' and 'unconstitutional.'¹ The Court declared in its verdict that the order of April 18, 1993 is not in accordance with the powers granted to him under Article 58(2)(b) of the 1973 Constitution as well as other similar powers, thereby making it of no legal effect.¹ The Court declared that it was Ghulam Ishaq Khan and not Nawaz Sharif who played an instrumental role to subvert the constitutional process. Ghulam Ishaq Khan had ceased to be a neutral head of the state and had aligned with prime minister's opponents to encourage these actors thus making efforts to destabilize the elected government.

However, the decision of the Court was also seen partisan because it was observed throughout the proceedings that the judges had already decided for upholding the supremacy of the 1973 Constitution. Moreover, the scope of the powers of president under the Eighth Constitutional Amendment were narrowed down to such an extent that in future a president would be thinking hard prior to take any action against the National Assembly.¹ However, the verdict eliminated the myth that the President is over lord of the parliament and the elected government. From the very beginning of filing the petition, the Chief Justice of Pakistan seemed to be in favour of the dismissed government because he had announced that the nation was about to hear 'good news.'¹ It is alleged that a deal involving a huge sum of money had been reached at Dubai due to which the decision of Supreme Court went in his favour.¹ However, it is also clear that the decision came against the backdrop of an intense public criticism of the dismissal and the presidential powers conferred under the Eighth Constitutional Amendment. Indeed, the judgement of the Court had been a prosecution of the President by the highest judicial organ in Pakistan. The decision was ultimately an insult for a person having never got a taste of defeat and that also at the hands of a person, who until yesterday remained subordinate to his office. The President House, issuing a press release on the same evening declared that the verdict of Supreme Court will be honoured.

The only dissenting judge of the Supreme Court was Justice Sajjad Ali Shah from Sindh who, contrary to other panel members, gave a dissenting verdict. His remarks were more critical, declaring that before this case, two prime ministers from Sindh had been dismissed under the same Article of the 1973 Constitution. However, the Court had declared the decision of the President to be valid and/or did not restore the dismissed government and the assemblies.¹ However, the tables of the Court had been turned for a Punjabi Prime Minister¹ and the government along with the National Assembly had been restored. Justice Sajjad Ali Shah further added that the Court had indicated that the decision would please the nation, which should be based on legality only. Benazir Bhutto remarked on the decision stating that the decision of Supreme Court is not doubted but the people are confused. They want to know why the presidential order for dismissal of her government was upheld in 1990, and why has it struck down the same nature of order issued for dismissal of Nawaz Sharif government. Addressing the PPP followers in a large gathering at Liaquat Bagh (Rawalpindi), Benazir Bhutto also expressed that the people do not know the glittering thing Nawaz Sharif has. He has been the ultimate beneficiary in case the government of PPP is dismissed under the Eighth Constitutional Amendment or that of his own (Nawaz Sharif).¹

It is pertinent to mention here that the government of Nawaz Sharif and the previous government of Benazir Bhutto were dismissed within different operational contexts. The government of Benazir Bhutto had been dismissed in August 1990 with a military backed initiative, on the grounds of corruption, failure to work effectively with the provincial governments and efforts in questioning the powers of the military. However, the dismissal of Nawaz Sharif's government was basically due to the efforts of the President for re-election. In fact, these two different contexts were the main reason that the Supreme Court asserted its independence and questioned the scope of the power of the president under the Eighth Constitutional Amendment, thereby invalidating the April 18, 1993 decision of the president. The decision of Supreme Court brought Pakistan to a crucial juncture in its history, by offering the politicians with an opportunity to move in the direction of genuine parliamentary democracy. However, motivated by their personal interest to regain power of the government, these politicians were still participating in the constitutional war of the President against the prime minister. By joining hands with the president, they also prevented a democratically elected government to complete its five-year term.

6.2.4 Continuation of Confrontation and Military's Intervention to Resolve the Tension

Immediately after the re-instatement of the government of Nawaz Sharif, he sought a vote of confidence from the National Assembly and received 123 votes. The emergency session of the National Assembly was boycotted by the PPP.¹ While obtaining this level of support from the National Assembly, Prime Minister Nawaz Sharif started planning for the impeachment of the President. His cabinet had also raised the issue in a meeting held after the Supreme Court's verdict but was dissuaded by the intervention of Army Chief General Abdul Waheed Kakar.¹ Soon, Nawaz Sharif was using help from General (Retd.) Hameed Gul, the Former DG ISI, and a mediating group to establish a working relationship with President Ghulam Ishaq Khan.¹ No doubt, the level of criticism by people was so high coupled with the decision of Supreme Court turning down the dismissal of Nawaz Sharif government and dissolution of National Assembly. Therefore, theoretically it should have been possible for the re-instated government and restored National Assembly to repeal or amend the Eighth Amendment especially 58(2)(b), thus moving Pakistan towards a direction of a genuine parliamentary democracy.

Unfortunately, the events following the Supreme Court's judgement made such an eventuality impossible for the civil government. Although, the constitutional war had been over, yet the ground situation was still very tense. Both the prime minister and the president resisted each other with a tough stance in the power game. Generally, the president was severely criticized to have dismissed an elected government mainly for personal reasons. The criticism was so severe that some had argued Ghulam Ishaq Khan had suffered from senile dementia and must be removed. The prime minister further added to the criticism by maintaining that the president's action had tarnished the image of Pakistan and that, upon being restored, his government would 'send the president packing.' Despite the Supreme Court's verdict and such criticisms, President Ghulam Ishaq Khan showed no sign of resignation. A few hours after the restoration of the National Assembly, the President issued a statement to accept the Supreme Court's verdict. A few weeks later, he also expressed his intention to work with Nawaz Sharif.¹

The actions of the president on the ground, however, belied these pronouncements. In fact, he started creating such conditions that could provide post-factum justification for his decision of April 18, 1993 and for preparing the ground to dismiss the elected government again. The starting point of the controversy became the center-provincial relations as the president was using provincial governments against the prime minister.¹ Within four days of the Court's verdict, the provincial assemblies of Punjab and Khyber Pakhtunkhwa (then NWFP) were dissolved by their respective provincial governors. A no-confidence move became successful against Chief Minister Ghulam Haider Wyne on April 25, 1993. He had been replaced by a pro-president member of the PML, Manzoor Ahmed Wattoo. However, once Nawaz Sharif government and the National Assembly were restored, Nawaz Sharif had successfully won over 137 members of the provincial assembly, to move a vote of no-confidence against Manzoor Ahmed Wattoo. However, the then Chief Minister Manzoor Ahmed Wattoo pre-empted the move, and with presidential acceptance, the pro-president provincial governor accepted his request for dissolution of the Provincial Assembly of Punjab on May 29, 1993.¹

The Provincial Assembly of Khyber Pakhtunkhwa (then NWFP) was also dissolved the very next day, by the governor on the advice of a pro-president chief minister, Mir Afzal Khan, who was expected to lose power to a pro-prime minister group. With the blessings of the president, Mir Afzal Khan then took over as Acting Chief Minister of the province. In the province of Sindh, members of PPP lodged a no-confidence motion against the provincial government but withdrew it the next day. Even in Balochistan, the relatively neutral Chief Minister, Taj Mohammad Khan Jamali, was replaced by Zulfiqar Magsi. These changes created fear that these provincial assemblies might also be dissolved by the respective governors, and the response of Nawaz Sharif was to go back to the judiciary. His supporters in the Punjab and Khyber Pakhtunkhwa (then NWFP) provincial assemblies filed cases in their respective High Courts challenging the dissolutions of these Assemblies. As the Courts considered cases for hearings, the relations between the centre and the acting provincial governments in these two provinces further deteriorated.

Meanwhile, the Lahore High Court also decided, on June 26, 1993, against the dissolution of the Punjab Assembly.¹ The situation became even worse when seven minutes after the decision of High Court, Acting Chief Minister Manzoor Ahmed Wattoo again advised the governor to dissolve the Punjab Assembly. Nawaz Sharif reacted by calling a joint session of Parliament on June 30, 1993 to get a proclamation passed under Article 234 that brought Punjab under federal rule by dissolving the provincial assembly.¹ The prime minister, ignoring legal advice, then appointed a new governor, chief secretary, and inspector general of police for Punjab. However, President Ghulam Ishaq Khan announced that as required under the Constitution, he had not received, approved, or signed any proclamation that would dissolve provincial assembly and extend central rule to Punjab. The result was two parallel governments operating in Pakistan's most populous and powerful province with the possibility of civil unrest breaking out. Nawaz Sharif looked increasingly weak, with his powers limited to the Capital Territory as the Army also declined to intervene.¹

This deteriorating situation in the country badly affected other aspects of centre-province relations. The government of Nawaz Sharif, annoyed at the president's success in dissolution of the provincial assemblies, reportedly instructed the central bank not to make any advances to the provincial governments of Punjab, Khyber Pakhtunkhwa (then NWFP), and Sindh. Although this order had been cancelled later, it was obvious that centre-province relations were heading towards a total breakdown. There were fears that the president had patronised the changes in the provinces as part of his strategy to wage a constitutional war against the central government of Nawaz Sharif. It clearly shows that the president was going to use this political instability in the provinces as an excuse to invoke Article 48(6). Then he would be able either to conduct a referendum on holding fresh elections, or ask Nawaz Sharif to seek a fresh vote of confidence again from the National Assembly under Article 91(5), or use the deteriorating situation in the provinces as a tool to declare a state of emergency throughout the country.

Meanwhile, Prime Minister Nawaz Sharif also explored the possibilities to repeal or amend the Eighth Amendment but it was apparent that he would not obtain the required two-third votes required to do so. The alliance of different political parties under the IJI that had grouped in the 1990 elections; Jamaat-i-Islami had already distanced itself on grievances from the PML. The ANP was still supporting Nawaz Sharif, but the PML, Nawaz Sharif's own party, had split into four factions prior to the dissolution of National Assembly on April 18, 1993. In a hastily called session of the National Assembly on May 31, 1993, Nawaz Sharif had asked Benazir Bhutto for cooperation with his government in defeating "the enemies of democracy" in Pakistan.¹ Soon, this offer of mediation was also extended to other political parties. Since the Supreme Court's verdict, Benazir Bhutto had openly questioned the impartiality of judiciary and had complained that the Supreme Court had not been willing to reinstate her government dissolved in 1990. Although, accepting the offer of negotiations extended by Nawaz Sharif in the National Assembly, Benazir Bhutto still repeated her demand for a government of national unity and fresh elections. Benazir Bhutto also joined the All Parties Conference (APC), which consisted of the political parties which were opposed to the government of Nawaz Sharif.

Some of the top military commanders had also shown neutrality in the power struggle between Ghulam Ishaq Khan and Nawaz Sharif. However, keeping in view the tension with India and Afghanistan, the military commanders viewed this confrontation to have created a negative impact on the national security.¹ Due to the inability of the president and prime minister in establishing a remotely satisfactory working relationship and the failure of the political parties to cooperate on any issue, it was widely believed that the military intervention would occur which, it did, but not directly by taking over the government. Contrary to its role played in the past, the Army Chief opted for neutrality and adopted the role of "peacemaker," probably due to two factors. Firstly, the military was careful not to side with President Ghulam Ishaq Khan and lend credence to the view that a Pashtun Army Chief was siding with a Pashtun President against a Punjabi Prime Minister. Secondly, Nawaz Sharif had been successful in gathering large crowds of supporters after the dismissal of his government and dissolution of National Assembly on April 18, 1993.¹ This had probably convinced the military that an attempt of direct involvement in political affairs might lead in a negative response from the people.

Therefore, the military remained silent during this issue except that the Army Chief Abdul Waheed Kaker intervened to prevent Nawaz Sharif from conducting impeachment of the President. However, the situation changed when PPP announced to start a Long March on July 16, 1993. The Manzoor Wattoo government in Punjab was prepared to support the Long March of PPP. In fact, the decision of the Long March was announced by Benazir Bhutto after her meeting with Manzoor Wattoo and after receiving messages of support from the president.¹ The announcement, therefore, heightened fears of serious clashes among rival groups in Punjab. Therefore, the Army Chief Abdul Waheed Kakar decided to intervene and take control of the events. He flew Benazir Bhutto into Islamabad and asked her to call it off, which she obliged. It shows that, after waiting for the politician to resolve the political issues themselves, the Army Chief Abdul Waheed Kakar finally decided to take a traditional role in

politics as an ultimate arbitrator to resolve the deadlock. However, this time, the Army Chief had to deal with a prime minister who, unlike his predecessors, was deriving and enjoying support of the same influential section of the military establishment.¹ But the involvement of the military in politics was limited to a passive support for the action of the president.

A series of meetings were held for negotiations between Nawaz Sharif, Ghulam Ishaq Khan and General Abdul Waheed Kakar with to resolve the deadlock. The military decided that both the president and the prime minister should quit their offices by resigning simultaneously.¹ Ghulam Ishaq Khan agreed to resign with the condition that Nawaz Sharif followed the suit.¹ The prime minister insisted on the resignation of the president because his being the mastermind of political crises. Finally, General Abdul Waheed Kakar had to force Nawaz Sharif for the negotiations which he complied.¹ During the special meetings of Corps Commanders, the military high command favoured fresh elections at the earliest.¹ Pakistan Democratic Alliance (PDA) which was led by Benazir Bhutto also announced its support and favoured the decision of the military to hold mid-term elections.¹ Benazir Bhutto also held meeting with General Abdul Waheed Kakar and got assurance on the fresh elections. The president, the prime minister and General Abdul Waheed Kakar held meeting on 18 July, 1993¹ to finalize the process of resignations.

Though Nawaz Sharif agreed to resign, he insisted that President Ghulam Ishaq Khan should precede so that he would request the new president to dissolve the National Assembly. However, President Ghulam Ishaq Khan's demand was the same and emphasised that he, as a Head of State would be announcing dissolution of the National Assembly. The Army Chief gave assurance to the prime minister that the president would resign after his resignation.¹ Therefore, Nawaz Sharif presented his resignation to the president, requested dissolution of the National Assembly thus stepping down as prime minister on 18 July, 1993.¹ Ghulam Ishaq Khan dissolved the National Assembly on 19 July, 1993 and announced that fresh elections will be held on October 06, 1993.¹ Consequently, the whole issue of the Eighth Constitutional Amendment was left to be resolved by a new National Assembly.

A caretaker government was appointed under the premiership of Dr. Moeen Uddin Qureshi, a Pakistani origin US national and an economist, and was sworn in by President Ghulam Ishaq Khan. Ghulam Ishaq Khan submitted his own resignation¹ and as per Constitution of 1973, the Chairman Senate Waseem Sajjad became the acting President of Pakistan.¹ Prior to this whole process, a document called "Agreed Arrangements on the Transition dated July 18, 1993" was signed by the outgoing president, the prime minister, Chairman Senate and the Caretaker prime minister in this regard because it was not an easy arrangement.¹ According to the US State Department, the president, the prime minister and the Army Chief were kept under pressure during the whole process of negotiation for ensuring that martial law is not imposed.¹

In this power struggle, Nawaz Sharif was the real loser at the end. However, he was himself responsible for it because it was his own ambition to garb absolute and unchallengeable authority. This

ambition had persuaded him to start working on the abolition of the Eighth Constitutional Amendment. In this regard, he had to gain support of the opposition especially the PPP. While doing so, he did not realise that if the Eighth Constitutional Amendment created an imbalance in the power structure by allowing sweeping powers to the President, the opposition would never concede the assumption of the same powers by the prime minister. He relied too much on his strength of having clear majority in the parliament and did not realise that the opposition political parties did agree to respect his majority.

The president had also been a major loser at the end of this power game. On the night of the dismissal of the government, the president revealed that the real differences with the prime minister started after Nawaz Sharif had objected his authority to appoint General Abdul Waheed Kakar as the Army Chief.¹ When Ghulam Ishaq Khan took over as the president of Pakistan after the plane crash of General Ziaul Haq in August 1988, the former had been looked upon by the people as something of a saviour, and even ignored his closeness to President Ziaul Haq. However, during the latter part of his tenure, Ghulam Ishaq Khan had become a manipulative old man who encouraged palace intrigues which were backed by his personal notions and desires.

Notes and References:

Chapter - VII

NEW TRENDS IN CIVIL-MILITARY RELATIONS AMIDST JUDICIAL

ACTIVISM

This chapter studies the second terms of offices of both Benazir Bhutto and Nawaz Sharif again under the powerful president Farooq Ahmad Khan Leghari and then Muhammad Rafiq Tarar as titular head of the state. It discusses the shift of powers from the president to the parliament and ultimately to the office of prime minister with the abolition of Eighth Constitutional Amendment. It also evaluates the restoration of powers of the prime minister after the annulment of 8th Amendment and its impact on the relationship among three state organs. This chapter further examines the political crisis, strained relations of elected governments with the military and within the executive itself i.e., between the president and the prime minister. The judicial activism under Justice Sajjad Ali Shah and its effects on relationship with the executive that led to the fourth military takeover in October 1999 by General Pervez Musharraf is also examined. Unfortunately, the governance and law and order by the civilian government during this period had not been good to the extent that the people welcomed military rule and the judiciary readily validate the move once again based on Law of Necessity.

7.1 Elections of 1993 and Benazir Bhutto's Second Term in Office

After stepping down of Nawaz Sharif and of Ghulam Ishaq Khan from their offices, a caretaker government was appointed under the premiership of Moeen Uddin Qureshi, a former bureaucrat who worked at the World Bank. All the governors and caretaker chief ministers were also drawn from the retired civil and military bureaucrats. Surprisingly, Asif Ali Zardari, the husband of Benazir Bhutto was also included in the caretaker setup. On October 6, 1993, the nation casted their votes in the scheduled general elections for the third time in just five years. The provincial elections were held on October 9, 1993.¹ This time people showed no enthusiasm mainly due to their frustration over the corruption of the politicians and the struggle for power between the president and the prime minister. The caretaker government gave an encouragement to an open discussion on the performance of Nawaz Sharif government. However, Nawaz Sharif criticised the caretaker government for its alleged efforts to defame PML-N and favour the PPP.¹ The caretaker government published a list of politicians along with their assets who were involved in corruption cases. It exposed the politicians to the masses and as a result, majority of the people preferred to stay at home instead of turning to the polling stations on the polling day.¹

The October 1993 elections gave birth to a hung Parliament as none of the political parties could have a clear majority in the National Assembly. However, Benazir Bhutto led PPP and Nawaz Sharif led PML(N)¹ could emerge as the major political parties. Out of 217 total seats, the PPP secured 86 seats (six less than in the 1988 elections) thus became the leading party and was followed by the

PML-N with 72 seats in the National Assembly.¹ The overall voters' turnout remained 40.92 percent.¹ The election results created concern as no single party could form government and in such a situation, the military could be prompted to end its neutral stance and intervene. The problem was solved when the PPP captured the positions of the Speaker and the Deputy Speaker in the National Assembly. Once again, the PPP, although with the help of PML (J), few small parties and some independent members,¹ became able to make coalition government at the national level. Benazir Bhutto got a vote of confidence as premier with 121 against 72 votes on October 19, 1993¹ for the second time in last five years. However, after the threat of military and powerful president, Nawaz Sharif led a formidable opposition in National Assembly with 72 members and a virtual majority in the Senate.¹ The PPP succeeded in establishing provincial governments in Punjab (coalition) and Sindh.¹ The PML (N), on the other hand, only managed to form a coalition government in the Khyber Pakhtunkhwa (then NWFP) with the help of ANP¹ and sat in the opposition in the Punjab as well as Sindh provincial assemblies.¹

7.1.1 Relations with Military under General Abdul Waheed Kakar

Premier Benazir Bhutto started her second term of office and chalked out a strategy in the light of her experiences during the first term thereby knowing how to deal with other stakeholders of the state power i.e., the military and the president. She had decided to co-exist with other members of the power troika and not to interfere in certain vital sectors. The prime minister, unlike her first term, had chosen the path of realism over idealism and therefore adopted a non-interventionist policy in the internal affairs of the military.¹ Benazir Bhutto showed full commitment to the military in terms of maintaining a smooth relationship with the latter. She was quite successful in doing so during the initial days. To get a strong hold of the powerful institutions, Benazir Bhutto replaced the heads of ISI and IB. The power troika consisting of the President, Prime Minister and the Army Chief started its functions quite smoothly.

All the power holders regularly held meetings and discussions on important issues especially the domestic and foreign policy. Benazir Bhutto had been taking in confidence, the Army Chief and DG, ISI in dealing with all important foreign policy and defence issues especially between Pakistan and the United States.¹ The DG, ISI, Army Chief and Prime Minister had developed a consensus, not to trust the inconsistent foreign policy of United States towards Pakistan. Facing the tough stance of United States on the nuclear issue of Pakistan was much difficult as the former demanded to roll-back this program. However, both the Army Chief and the Prime Minister had agreed on a point that the nuclear program was an internal matter and its continuation was in the national interest. Therefore, it was agreed that any foreign influence in this regard will not be tolerated in the best interest of the country.

The new Deputy Secretary of State, Strobe Tolbert was more impressed from the Indian democracy. Therefore, he was critical of the fragile elected government in Pakistan in which the

military held a strong hold over the decision making. Tolbert offered relief in the Pressler Amendment¹ only if Pakistan would be willing to cap the nuclear program. However, General Abdul Waheed Kaker was not ready to comply with the terms of the US. In his visit to the United States, General Abdul Waheed Kaker asserted his point of view to the United States authorities even over their annoyance. Lt. General Ziauddin Khawaja accompanied Benazir Bhutto during a meeting with a delegation of United States for ensuring a firm stand on the nuclear program of Pakistan. The efforts of United States for entering into the nuclear installations of Pakistan were also blocked.¹ The commitment between the civil government and the military high command about nuclear program was helpful to develop good working relationship. However, the fact that Benazir Bhutto was not allowed to deal unilaterally with United States on the issue of nuclear program showed distrust of the military on Benazir Bhutto.

No doubt, the efforts of Benazir Bhutto bore fruits when the name of Pakistan was removed from the watch list of the US State Department. It had held Pakistan responsible for sponsoring terrorism. Under the Brown Amendment,¹ the United States released the military equipment which were stopped in 1990. Since Benazir Bhutto was giving priority to all the issues of the military's interests, the latter were satisfied with the performance of her government. However, Nawaz Sharif, the leader of opposition continuously criticised both the military and Benazir Bhutto to have played key role in the dismissal of his government. He alleged that the threat of Benazir Bhutto for sealing Islamabad during his government was also backed by the military.¹ He announced that Pakistan possessed nuclear weapons which increased hurdles for Benazir Bhutto government in negotiations with the United States on the issue of procurement of weapons. In fact, Benazir Bhutto had done the same during Nawaz Sharif government when he was due to visit Japan in 1993.¹

Benazir Bhutto government and the military were successful to uncover a planned coup, mostly from junior ranked officers led by Major General Zahirul Islam Abbasi in September 1995.¹ The coup was meant to assassinate the Prime Minister and the Army Chief by taking over government and declaring Pakistan an orthodox Islamic state. In a meeting with the political wing of ISI, General Abdul Waheed Kaker expressed, "I wish, your half is good." He ordered General Javed Ashraf Qazi to cleanse the ISI of all the Islamists and post them out with immediate effect. Later, General Javed Ashraf Qazi was also transferred.¹ This attempted coup reflected that the increasing proportion of Islamists in the society had also been affecting the ranks of the military which ultimately was the breeding ground for the military recruitment. It happened at a time when the United States Congress was to consider passing of the Brown Amendment for reconsideration of the Pressler Amendment.

To have a cordial working relationship with the Army Chief, Benazir Bhutto offered him a one-year extension. Benazir Bhutto appreciated his neutrality that although efforts were made by the opposition political parties to politicise his role and provoke him against her government, yet the Army Chief remained aloof from politics. Refusing the extension, the Army Chief took his retirement on due date i.e., January 12, 1996.¹ It confirms that individual character of an Army Chief has played a dominant role in deciding the nature of civil-military relations in Pakistan. Whatever the circumstances

were, the reality is that General Abdul Waheed Kaker had honoured the public mandate thus avoiding that the military be dragged into the political affairs of the country. Although, this role of the Army Chief was in accordance with the Constitution, yet Benazir Bhutto praised the former for establishing a healthy tradition in the post Ziaul Haq era. General Jahangir Karamat was elevated as the successor Army Chief on January 12, 1996. Though, Benazir Bhutto was in favour of someone else, General Jahangir Karamat was appointed after consultation with President Farooq Ahmad Khan Leghari.¹

7.1.2 Relations with Judiciary under Chief Justice Sajjad Ali Shah

Benazir Bhutto government appointed Justice Sajjad Ali Shah as the Chief Justice of Pakistan on June 5, 1994.¹ However, the elected government had superseded three senior judges for this appointment.¹ It seems that Benazir Bhutto took this decision due to his dissent notes in two cases before the Supreme Court which the PPP took for a support. First, in Ahmad Tariq Rahim Case, Justice Sajjad Ali Shah was one of the two dissenting judges having declared that the order of President Ghulam Ishaq Khan for dissolving of the National Assembly and dismissal of Benazir Bhutto government in 1990 was invalid. In the case against the dismissal of Nawaz Sharif government by President Ghulam Ishaq Khan, Justice Sajjad Ali Shah was the only dissenter on the Bench who upheld the presidential order. Hamid Khan quotes an un-named influential PPP member that he saw Justice Sajjad Ali Shah sitting with Asif Ali Zardari in the Supreme Court Rest House Lahore, assuring Asif Ali Zardari that he would do what the PPP government desired him to do.¹ However, the later developments proved that Sajjad Ali Shah as Chief Justice sought independence of the judiciary and challenged Benazir Bhutto government on several occasions.

According to the critics, the authoritarian style of Benazir Bhutto government led her to develop differences with the superior judiciary. Benazir Bhutto started direct confrontation with the Chief Justice who stood for the independence of judiciary. This tussle was coupled with confrontation with President Farooq Ahmad Khan Leghari on several issues like the weak economic and political performance, corruption and unnecessary confrontation with the judiciary.¹ In order to save her government from the adverse judgements of judiciary, Benazir Bhutto started appointing pro-PPP lawyers and judges in the High Courts and Supreme Court of Pakistan.¹ Benazir Bhutto government was not the only government to appoint or transfer judges without consideration of merit. However, the practice undermined the integrity of judiciary with negative implications. Moreover, political appointments and transfers were blamed to had increased over the past few years, thereby compelling the judiciary to take necessary measures.

The PPP government removed the sitting Chief Justices of Lahore and Sindh High Courts by transferring them to the Federal Shariat Court. It was because, they were considered anti-PPP and pro-PML(N). Although humiliating, the Chief Justice of the Sindh High Court agreed with this transfer; however, that of the Lahore High Court preferred an early retirement. Both were replaced by two judges of Supreme Court who were posted there as Acting Chief Justices. The appointment of Justice

Abdul Hafiz Memon bypassed all the merits. He was first transferred as a judge of the Sindh High Court and subsequently appointed as an Acting Chief Justice. However, the notification was immediately rescinded, when the government came to know that his appointment as High Court judge had made him the junior-most judge and thus he could not be the Acting Chief Justice. Therefore, another notification was issued, notifying him as Supreme Court judge, followed by another notification appointing him to the Sindh High Court as an Acting Chief Justice. Similarly, in case of Lahore High Court, the government considered Justice Muhammad Ilyas, a retired judge of the Lahore High Court and then serving as a judge of the Federal Shariat Court. He was deeply aggrieved from Nawaz Sharif government on account that he had been denied appointment as Chief Justice of the Lahore High Court. Appointing him as a Supreme Court judge, he was transferred to the Lahore High Court to be appointed as an Acting Chief Justice. The Peshawar High Court was already headed by an Acting Chief Justice.¹

Now Benazir Bhutto government initiated another phase of appointments to fill the four High Courts with likeminded judges. Only in Sindh High Court, nine judges were appointed. Majority of them were appointed either on political basis or were favourites of the PPP leaders. Most of the appointees either did not fulfil the required qualification or were not fit to be appointed as High Court judges because of their lacking the required experience at the Bar of the High Court.¹ Moreover, ignoring the sanctity of higher judiciary, twenty judges were appointed to the Lahore High Court in August 1994, which created further problems for Benazir Bhutto government. Only two out of them were session judges and the remaining eighteen judges were selected from amongst the bar members. Thirteen of the twenty judges were the activists of PPP and were lacking the required professional experience.¹ Only seven judges were eligible for their appointment as High Court judges on merit.

The legal basis of the appointments of these twenty judges to Lahore High Court was challenged in the case titled: *Al-Jehad Trust vs Federation of Pakistan* in the Supreme Court.¹ However, Benazir Bhutto pressurised the Chief Justice Sajjad Ali Shah not to entertain that any appeal filed against the legality of these appointments.¹ However, the terms dictated by the prime minister were turned down by the Chief Justice, mainly because it was against the independence of judiciary. The judgment declared by the Supreme Court came as a check on the civilian government, thus curtailing arbitrary use of its powers to appoint judges to the superior judiciary.¹ The detailed judgement of the Supreme Court reduced the power of the elected government in the appointment or transfer of higher courts judges unilaterally thus binding it to consult the Chief Justice of Pakistan and Chief Justices of High Courts as the case may be.¹ Moreover, the Supreme Court gave the ruling that the Chief Justice of Pakistan and also the Chief Justices of the High Courts will be appointed on the basis of seniority, and to record a strong justification to the contrary.¹ The Court also declared in its verdict that the recommendation of the Chief Justice of Pakistan and Chief Justices of a High Courts, as constitutional consultees, was binding on the executive for appointment of judges to the superior judiciary respectively.¹ Moreover, it held that if the government disagreed with their views, it should record strong and cogent reasons to be valid and justiciable.¹

The landmark judgement also required that all the appointments which had been done without the consent of the Chief Justices should be reviewed.¹ The confrontation between the prime minister and Chief Justice Sajjad Ali Shah increased when the Chief Justices of High Courts refused to confirm the recommendations of the government given in 1994 regarding the appointments of the judges to the High Courts. Chief Justice Sajjad Ali Shah along with the four Chief Justices of the High Courts gave an order to remove twenty-four (24) judges, appointed by Benazir Bhutto government.¹ Benazir Bhutto refused to comply with the judgment due to which a constitutional crisis had emerged. Therefore, the Chief Justice was forced to approach President Farooq Ahmad Khan Leghari to resolve the deadlock who had already suggested to Benazir Bhutto to accept the judgment of the Supreme Court. Farooq Ahmad Khan Leghari moved a reference to the Court to obtain its opinion whether the president had discretionary powers to appoint judges to the higher judiciary or the opinion of the prime minister was binding on him.¹

The judicial activism continued and throughout the year, the decisions of the court embarrassed the elected government. Benazir Bhutto accused the opposition parties for their alleged efforts to use the judiciary for toppling her government. She targeted the Jamat-i-Islami, which had demanded resignation and replacement of Benazir Bhutto with a caretaker government headed by the judiciary.¹ In response, Chief Justice Sajjad Ali Shah issued a public statement that indirectly accused Benazir Bhutto government of its efforts to ridicule the judiciary, defy its judgments, and to unjustly accuse the judges to have aligned itself with opposition political parties. To him, irresponsible statements have been issued for giving a bad name to the superior judiciary which is only fulfilling its duties as enjoined in the 1973 Constitution. The judiciary does not want to have any confrontation with Benazir Bhutto government.¹

The Supreme Court had released Sheikh Rasheed, an opposition leader in March 1996. He was sentenced by a lower court on the charges of illegal possession of an AK-47 gun (Kalashnikov) thus remaining behind the bar for more than one and a half year.¹ In June 1996, the Supreme Court of Pakistan restored the local governments in the Punjab. The verdict of Supreme Court was invalidated by Punjab Assembly when it repealed the Local Government Ordinance 1979.¹ Imposing the Governor Rule in Punjab,¹ the provincial assembly was called a week later¹ and Chief Minister Manzoor Watto was asked to seek for a vote of confidence. As he could not secure the required mandate, the next day, Sardar Arif Nakai was elected as Chief Minister of Punjab.¹ Mian Manzoor Watto filed a reference in the Lahore High Court, which reinstated his government in the Punjab.¹ The presidential proclamation, the advice of governor and appointment of Sardar Arif Nakai were declared as without lawful authority, thus causing considerable embarrassment for Benazir Bhutto government.¹ However, Mian Manzoor Watto tendering his resignation thus dissolved the Punjab Provincial Assembly due to the confrontational politics between the centre and Punjab. The situation really contributed to the confrontation between the prime minister and the Chief Justice of Pakistan coupled with the tensions between the prime minister and the president.

7.1.3 Relations with the President Farooq Leghari; a Party Loyalist

Less than one month after the general elections, presidential elections were held in Pakistan.¹ One of the key steps to gain stability for her government for the mandated period was to fill the Presidency with a loyal figure. Everyone had believed that by dismantling the government of Nawaz Sharif in April 1993 and inclusion of Asif Ali Zardari in the caretaker setup were done with the tacit understanding between Benazir Bhutto and Ghulam Ishaq Khan that he will be supported as PPP candidate in the next presidential elections. To the surprise of everyone, the government of Benazir Bhutto nominated Farooq Ahmed Khan Leghari, a PPP stalwart as its candidate.¹ He was nominated mainly to save her government from the discretionary powers of the president which were conferred on him under the Eighth Amendment.

Farooq Ahmad Khan Leghari was elected with 274 votes by defeating Wasim Sajjad of the PML-N with 168 votes.¹ Now the PPP was enjoying support of a party loyalist as head of the state, PPP governments in Punjab and Sindh, and a more supportive military. Therefore, Benazir Bhutto had been enjoying smooth relations with all the actors in Pakistan polity as compared to its first term in government between 1988 and 1990.¹ However, the military wanted establishment of a coalition government or, in otherwise case, favoured a president from another party. Therefore, the acting President Wasim Sajjad was their favourite choice. Both Benazir Bhutto and Nawaz Sharif opposed the idea of a coalition government. However, Nawaz Sharif showed agreement for appointment of a person from Muslim League as the President of Pakistan. Benazir Bhutto initially showed no objection, however, rejected such an arrangement later.

President Farooq Ahmad Khan Leghari in his first speech, extended his support and commitment to repeal the Eighth Constitutional Amendment. To him, the sooner it is done, the better it would be.¹ Benazir Bhutto stated that the Eighth Constitutional Amendment had no effect, at least, for the next five years due to the election of Farooq Ahmad Khan Leghari as the President of Pakistan. The prime minister promised a Bill will be soon presented for the annulment of Eighth Constitutional Amendment. To her, since the government of Nawaz Sharif also suffered from the Eighth Constitutional Amendment, he was expected to lend support to the PPP government for its annulment.¹ However, the PPP government presented no such bill till its dissolution in November 1996. Most important of all for her was a party president this time. Therefore, Benazir Bhutto started with a clear advantage of majority for her federal government in National Assembly and coalition governments in three provinces.

However, differences between Farooq Ahmad Khan Leghari and Benazir Bhutto started in late 1995. The main reason was the selection of Lt. General Jahangir Karamat, the senior most officer and the choice of the military, to be appointed as Army Chief in place of General Abdul Waheed Kakar who retired in January 1996. Prime Minister Benazir Bhutto's candidate for Army Chief had been an officer junior to Jahangir Karamat whom President Farooq Leghari vetoed in favour of the military's

choice. It came as the first public disagreement between Benazir Bhutto and Farooq Ahmad Khan Leghari. The differences escalated when President Farooq Khan Leghari highlighted the issues of major corruptions by the PPP members including Asif Ali Zardari and asked Benazir Bhutto to act on priority basis.¹ Farooq Ahmad Khan Leghari was offended when instead of resolving these corruption issues, Benazir Bhutto appointed Asif Ali Zardari as Minister for Investment. The President was compelled for setting up a commission including Wasim Sajjad, the Chairman of the Senate and Yousaf Raza Gilani, the Speaker of the National Assembly for considering the issues of corruption.¹ President Farooq Khan Leghari also claimed that he had blocked the efforts of Benazir Bhutto to dispose-off a gas field which also damaged their mutual relations.¹

While maintaining pressure on Benazir Bhutto, the president directed the governors of the four provinces to take necessary action against the corruption and the deteriorating law and order situation. Meanwhile, Benazir Bhutto's brother Murtaza Bhutto, who was leading his own political party due to differences with Benazir Bhutto was killed on September 20, 1996 in a police encounter in Karachi. There were rumours about his alleged assassination by police officials and the involvement of some agencies in the plot.¹ Benazir Bhutto, accusing President Farooq Khan Leghari and MI, declared that Murtaza Bhutto's killing was part of an ongoing conspiracy to dismiss her government. The president expressed his concern over these allegations thus warning Benazir Bhutto not to blame the integrity of state institutions.¹ Farooq Khan Leghari declared that all the police officers in Clifton including the Deputy Inspector General (DIG) Shoaib Suddle, were the appointees of Benazir Bhutto government.¹ A judicial commission, appointed under Justice Nasir Aslam Zahid, submitted its report to the elected government in June 1997. Investigating the murder, the commission declared that it was an extra judicial killing by the police which was carried on with the orders of some higher authority. However, the commission failed to fix responsibility within an institution or on an individual.¹ However, the general perception was that Asif Ali Zardari, the husband of Benazir Bhutto was behind this murder.

Benazir Bhutto and Farooq Ahmad Khan Leghari, instead of resolving their mutual differences, opted to use the intelligence agencies against each other. Former head of the Intelligence Bureau (IB), Masood Sharif submitted his statement to the Supreme Court that twelve (12) intelligence agencies were directed either by Farooq Ahmad Khan Leghari or Benazir Bhutto to record the phone calls of government officials and the public.¹ Benazir Bhutto was mainly using the IB for collecting information about President Farooq Khan Leghari, his son, the Chief Justice of Pakistan and other civil bureaucrats and military commanders.¹ However, President Farooq Khan Leghari was using the ISI for collecting information against Benazir Bhutto and other government members.¹ Army Chief General Jahangir Karamat held frequent meetings, both with Farooq Khan Leghari and Benazir Bhutto for resolving the differences. His efforts bore fruits when Benazir Bhutto agreed for meeting with the president. Although, it is appreciated, but to be realistic, the Army Chief was not entitled for any interference in the political affairs of the executive. Later, Benazir Bhutto sent Rao Sikander Iqbal, Nuraez Shakoor and Khurshid Shah, senior politicians from PPP to meet President Farooq Khan Leghari and discuss his grievances from the government.

Nawaz Sharif along with Abida Hussain, Chaudary Nisar and other Muslim Leaguers also held meeting with President Farooq Khan Leghari and pointed out the worsening economic situation and demanded mid-term elections. Other opposition parties also added fuel to the fire and encouraged Farooq Ahmad Khan Leghari to dismiss the government of Benazir Bhutto. The judgement of the Lahore High Court to restore Manzoor Wattoo's government in Punjab on November 3, 1996¹ caused considerable embarrassment for the federal government and threatened its survival.¹ This was a severe blow as the government of Sardar Arif Nakai was installed by the Prime Minister just a year back on September 12, 1995.¹ In fact, President Farooq Khan Leghari wanted to ensure his neutrality because he had already given resignation from the party after his election as President. Moreover, he had also declared that joint efforts are required on the part of the PPP and PML-N, the two main political parties to repeal 58(2)(b). The DG, ISI and Army Chief regularly informed the president of the overall situation in Pakistan. Moreover, the president was repeatedly asked by different circles to dissolve the elected government. His response was that he would be using presidential powers for protecting the interest of the country however, by the time, he did not decide anything about the crisis.¹

7.1.4 Dismissal of Benazir Bhutto Government and Judgement of the Supreme Court

The government of Benazir Bhutto had been in power for two and a half years i.e. May 1996. However, she had been facing strong resistance from the opposition political parties and a critical press. Back in 1993, Benazir Bhutto had consistently followed a single point agenda to topple the government of Nawaz Sharif and had been using all means for it. As retaliation, therefore, Nawaz Sharif was posing a much stronger opposition to Benazir Bhutto and was more impatient for overthrowing her government mainly through agitational politics and a rigorous campaign through media. The grounds on which Benazir Bhutto had been demanding resignation of Nawaz Sharif, her government was indulged in almost similar problems such as political victimisation, mega corruption and political bribery. Moreover, efforts were made to control the higher judiciary through political appointments. Benazir Bhutto government also avoided appointing the Public Accounts Committee in the National Assembly meant for scrutinising the expenditures of the PPP government. In brief, Benazir Bhutto government was successful in her efforts to concentrate all powers i.e. judicial, legislative and financial, unto her office. This was a situation which Benazir Bhutto herself had deemed as most dangerous before the elections of 1993.

During the year 1996, Benazir Bhutto government had alienated the judiciary, the military, the president, the world monetary bodies like World Bank and IMF (in particular), and the Pakistani public-at-large. The confrontation between Benazir Bhutto government and the opposition political parties continued and the prime minister was declared a security risk to the national security and integrity of Pakistan. At initial stages, the criticism was tolerated but finally, PPP government had to use the state machinery for dealing with the opposition. Mian Muhammad Sharif and Mian Shabbaz Sharif, father and brother of Nawaz Sharif respectively were subjected to ill-treatment by the state

agencies.¹ This intolerance of the government and opposition towards each other provided again an opportunity to the military and the president to roll down the elected government.

The Army Chief apparently remained neutral in the controversy of Benazir Bhutto with both Farooq Khan Leghari and Justice Sajjad Ali Shah. However, majority of the military commanders were in favour of the President and the Chief Justice. The establishment in Pakistan was worried about the growing corruptions and worsening economic situation. Therefore, the military warned President Farooq Khan Leghari about the worst situation and demanded quick remedial measures in August 1996.¹ The President, accordingly, called her for a meeting over corruption and economic issues. However, Benazir Bhutto issued some derogatory statements about Farooq Khan Leghari saying that he has been nominated as President by her party.¹ The law and order situation especially in Punjab was also of concern for the military. Therefore, Sardar Arif Nakai, Chief Minister Punjab was called into the General Headquarters (GHQ) of Pakistan Army in Rawalpindi to discuss the bad law and order with the Army Chief.¹ In October 1996 the military concluded that the elected government of Benazir Bhutto was failing in dealing with the crises. Therefore, it became easy for President Farooq Leghari to dismiss the government of Benazir Bhutto as he was now sure that military would not object to his action of dismissal.

However, what many observers of Pakistan felt imminent in December 1995 took eleven months to occur. On November 5, 1996, the president invoked Article 58(2)(b) of the Constitution to dissolve the National Assembly and dismiss the elected government following months of turmoil in the country. In the Dissolution Order, the President charged Benazir Bhutto government for not taking adequate steps for bringing an end to the extra judicial killings, blame on the president and other state institutions for involvement in the killing of Mir Murtaza Bhutto. It showed reluctance in implementation of the Supreme Court orders and curtailed the independence of higher judiciary by passing of the accountability laws. Moreover, it was alleged with moving a bill in the Parliament, apparently meant for preventing corruption, but its effect was a deliberate violation of the basic right of the citizens to have privacy. In addition, there was rampant corruption, nepotism, favouritism, and violation of administrative rules for running the affairs of the government, as among lesser charges.¹ This was the fourth elected prime minister dismissed since 1988, and Farooq Khan Leghari became the third president of Pakistan to have exercised the constitutional power under 58(2)(b) in this regard. However, the performance of Benazir Bhutto had made that day bound to come. In fact, Benazir Bhutto was emerging as an arrogant, reckless, capricious and corrupt ruler. Moreover, she was surrounded by sycophants, lackeys and flunkies thereby squandering away another good opportunity to prove her services for the people of the country.¹

Benazir Bhutto's government was dismissed for the second time in a coup like style and regular troops of the military were asked to take control of all government buildings in Islamabad including the office of the prime minister. Moreover, all the international airports were closed and, the mobile-phones were also jammed for the first time in Pakistan.¹ The military also arrested Asif Ali

Zardari from the Governor House in Lahore and was later taken into custody by the local administration. Initially, the Governor of Punjab was kept under the house-arrest but later he was forced to give resignation. After the successful completion of this operation, the military handed over charge to the para-military forces. All the Corps Headquarters remained open in all the four provincial capitals for the whole night. They had been passing on the instructions being received from the Presidency and General Headquarters (GHQ) of Pakistan Army to the top brass of civil bureaucracy and were ensuring the compliance.¹ This support and coordination really shows what was the level of support from the Army to the decision of President Farooq Khan Leghari.

The effort of Benazir Bhutto to get the Dismissal Order reversed through the Supreme Court was as unsuccessful like her appeal to the public. On November 13, 1996 Benazir Bhutto challenged her dismissal and filed a 42-page petition in the Supreme Court which “contained blistering criticism of the President.”¹ Three days later, the Court dismissed the petition stating that it was “argumentative, irrelevant, and scandalous.”¹ The Supreme Court in a 6:1 judgement in *Mohterma Benazir Bhutto vs President of Pakistan*, upheld the decision of the president. It maintained that the president had been able to submit adequate evidences to prove that the dismissal order of Benazir Bhutto government was correct.¹ The Chief Justice of Pakistan declared in his judgement that there is enough material to establish corruption, nepotism and misrule against Benazir Bhutto government. The Court also allowed fresh general elections on the scheduled dates. Thus, the November 5, 1996 presidential order, validated by Supreme Court removed Benazir Bhutto as prime minister, one again.¹ However, the decision of Chief Justice Sajjad Ali Shah’s Court clearly reflected its own grudge against Benazir Bhutto government also. Another petition was then filed in the Supreme Court but it was also dismissed for hearing.

7.2 General Elections of 1997 and Nawaz Sharif’s Coming Back

Shortly after issuing the Dissolution Order, the president had consulted Army Chief General Jahangir Karamat on the appointment of caretaker government. President Farooq Khan Leghari administered oath of office to Malik Meraj Khalid, a politician from PPP, and was appointed as a caretaker prime minister.¹ However, it is noteworthy to say that the two caretaker prime ministers, following the first and second dismissal of Benazir Bhutto government were actually from the aggrieved sections of the PPP who worked against the interests of the party.¹ No doubt, they were appointed to ensure that they will be favourable to the establishment in the next general elections and will act against the PPP. Moreover, President Farooq Leghari appointed his old friend and an economist from the World Bank, Shahid Javed Burki, as Advisor on Finance to the Prime Minister. Najam Sethi, a reputed journalist from Lahore and a pro-Muslim Leaguer was also appointed as Minister of Accountability. All the chief ministers including two Governors were also replaced during the caretaker government. During the appointment of cabinet ministers, the President also consulted the DG ISI, Lt. General Nasim Rana for his input.

The military extended support to the caretaker government and got military personnel inducted into the civilian departments. The Council for Defence and National Security (CDNS) was proposed as a new forum to include the military high command in the decision making process, especially during the caretaker government.¹ In order to please the military, President Farooq Khan Leghari established the proposed CDNS in January 1997 without consulting the caretaker prime minister.¹ The Council was to be chaired by the President in order to reassure the establishment that even if an elected Prime Minister would come to power as a result of next elections, he would be working under the supervision of this Council. Nawaz Sharif did not show any reaction to the establishment of this Council, a signal of his acceptance of the body.¹ However, the president faced huge criticism for establishing CDNS due to which the Army Chief distanced himself from its meetings. When the newly elected civilian government took over the charge under the Prime Minister Nawaz Sharif, the newly established CDNS was scrapped.¹ Nonetheless, the establishment of CDNS without consulting the caretaker Prime Minister and especially during the caretaker government exposed the level of adherence extended to the Army Chief by the elected President.

According to the 1973 Constitution, elections in Pakistan are required to be held within 90 days from the dismissal of the government. The caretaker government appointed by President Farooq Leghari had a deadline of February 3, 1997 to clean up what had come to be known as the “Augeans tables” of Pakistani politics, as the President had promised elections by the said date. The Caretaker Prime Minister announced on November 10, 1996 that a corruption committee would be appointed shortly to investigate politicians facing all sorts of charges, including Benazir Bhutto and Asif Ali Zardari. This clearly meant that if Benazir Bhutto was convicted of the charges, she might be disqualified from contesting the elections.¹ The caretaker government issued an anti-corruption order just four days after this announcement which was applied to politicians and top officials. It provided for a seven-year ban on holding public office, a maximum prison sentence of seven years, and an unspecified fine, if convicted.

However, only one day after the order, Benazir Bhutto was released from what the caretaker government called “protective custody.” Upon her release, Benazir Bhutto addressed a 90-minute press conference to the media. She condemned President Farooq Leghari as another of the “self-styled messiahs” who had repeatedly trampled on the process of democratisation in Pakistan. Benazir Bhutto declared that after she had named him president, Farooq Leghari had grown arrogant and power hungry and had become a perennial “No. 2 man.” The invective that Benazir Bhutto used in this press conference was reminiscent of the one used by her father, Z. A. Bhutto in describing General Ziaul Haq after the General had dismissed his government in July 1977.

General elections were held in February 1997 for the fifth time in last twelve years. The military assisted the interim government in holding the general elections peacefully. The turn-out of the voters appeared to be the lowest in the history of Pakistan. It was due to the same political situation, same faces of the candidates, same political parties and same corruption stories of the politicians.

However, the official sources under the caretaker government had a claim, as high as 40.27 per cent.¹ The PPP and religious parties lost badly in the elections. PPP could secure only 18 National Assembly seats, all in the province of Sindh only thus securing not a single seat in other provinces. PML-N won 122 out of 200 National Assembly seats and at the end secured a total of 137 members.¹ Surprisingly, the results and performance of PPP in these elections was dismal in Punjab, Khyber Pakhtunkhwa (then NWFP) and Balochistan thus losing majority in all these provincial assemblies. PML-N formed strong government in Punjab and coalition governments in all other provinces.¹

However, it had commonly been perceived that pre-poll rigging and changes in election results, allegedly managed by caretaker administration and agencies under the patronage of President Farooq Ahmad Khan Leghari had concluded the absolute majority for PML-N. Another reason was that unlike the elections of 1993 in which PNL-N confronted with mid-term election on a very short notice, this time, it was well prepared mainly because it had already started its election campaign to dislodge the government of Benazir Bhutto.¹ In 1997 elections, Nawaz Sharif obtained support of 177 members in the vote of confidence in the National Assembly. Thus, he was able in securing the office of the Prime Minister for the second term on February 17, 1997. Despite absolute majority, the PML-N government was joined by MQM and ANP as coalition partners along with some independent members in the National Assembly.¹

The coalition government under Nawaz Sharif gave an impression that the political parties, despite their differences, would be working jointly to secure the national interests of Pakistan for the first time. However, the assumption proved wrong because the practical reality experienced that it was impossible for the political leaders in Pakistan to keep national interests above their personal ambitions. However, Benazir Bhutto and Nawaz Sharif had also cooperated with each other to annul 58(2)(b).¹ Nawaz Sharif continued the proceedings of Accountability Commission, initiated by President Farooq Khan Leghari against Benazir Bhutto and Asif Ali Zardari. Moreover, the Accountability Commission was replaced with an Accountability Cell under direct control of Nawaz Sharif in the Prime Minister Secretariat. It further enhanced the powers of prime minister to flex the muscles of the opposition members along with the businessmen, journalists and others opposed to PML(N) government.¹

The Prime Minister took start with some good working relations with both President Farooq Leghari and the Army Chief Jahangir Karamat. Both, the president and the military had reservations about the deteriorating economic situation in Pakistan for the improvement of which Nawaz Sharif took many steps. Nawaz Sharif's first preference was to introduce a constitutional amendment to repeal Article 58(2)(b) and other presidential powers in favour of the prime minister. Alarmed by this act, the other state institutions like the President, the Supreme Court and the military attempted to counteract these measures to protect their respective interests, but in vain.¹ Nawaz Sharif sought help of all political parties to repeal Article 58(2)(b) of the 1973 Constitution. Nawaz Sharif government brought 13th Constitutional Amendment which deprived the president from his powers to dismiss the elected government and dissolve the National Assembly. Moreover, the powers of the president for the

appointment of the services chiefs, Chairman JCSC and other important heads of state institutions were also transferred to the premier.¹ The president was now a titular head of the state and a symbol of unity of the federation of Pakistan. However, the Thirteenth Constitutional Amendment bill was initiated in the National Assembly after the meetings of the prime minister with Army Chief and the President to secure their agreement on that move. Benazir Bhutto had also supported this amendment warmly, because she had been removed from office twice through these powers.¹ Nawaz Sharif became more confident by securing constitutional powers under the Thirteenth Constitutional Amendment.

Three months later, to secure his parliamentary majority, Nawaz Sharif introduced Fourteenth Constitutional Amendment Bill to discourage floor crossing in both houses of the parliament. It was to bind the party members for casting their votes in accordance with the instructions given by their parliamentary leader.¹ In fact, this was intended to impress strong party discipline upon the party members by enhancing powers of the party leader in terms of his complete control over them while voting in the Parliament. The power of an ordinary parliamentary member to speak his mind independently in the assembly was curtailed. No state institution, not even the superior judiciary could interfere if membership of a parliamentarian would be cancelled.¹ During discussion in the parliament, Nawaz Sharif very proudly declared this amendment as a permanent solution to the problem of floor crossing.¹ However, this amendment facilitated a dictatorial role for Nawaz Sharif as a powerful head of the government and who held the party headship to maintain control over his parliamentary party members. With the passing of Fourteenth Constitutional Amendment, there remained no chance to bring a no confidence motion against Nawaz Sharif. The prime minister was empowered to exercise all the executive powers.

Pakistan's atomic explosions on May 28, 1998 in response to India's nuclear tests had enabled Nawaz Sharif to gather more powers due to the state of emergency which his government proclaimed on the day of nuclear tests.¹ Nullifying the state of emergency, however, the Supreme Court ordered the restoration of fundamental rights of the citizens of Pakistan in July 1998.¹ No doubt, going for the nuclear tests was a tough decision for the civil government, but it earned popularity for Nawaz Sharif. However, at the same time, it was too hard to face the punitive sanctions applied by the international monetary institutions.

7.2.1 Confrontation with the Judiciary and the President

Having forestalled the perceived threats of dismissal of his government and losing majority in the parliament through constitutional amendments, the prime minister turned towards the third pillar of the state, namely the judiciary. Nawaz

Sharif government passed the Anti-Terrorism Act (ATA) on August 13, 1997 which also established special courts.¹ It empowered the law enforcing agencies, to search the houses and arrest the suspects without warrant. Chuadhry Shujaat Hussain (the then Federal Minister for Interior) promised that the military would exercise no power in civilian affairs beyond the military courts.¹ The Army Chief had already announced that the Army will not involve in political affairs and none of the political parties will be targeted.¹

Special military courts were established under ATA, but the cases decided by these courts revealed that they took more time than specified in the ATA. This limitation of the military courts was severely criticised by different circles in the public. Hearing petitions against the judgement of ATA, the Supreme Court declared that the 1973 Constitution allows no parallel judicial system.¹ The Court also declared that twelve of the provisions of ATA are controversial and invalid.¹ Those section of ATA that empowered the law enforcing agencies to enter any place for search and operations, were declared unconstitutional.¹ Earlier in August 1997, when the ATA was challenged in the Lahore High Court, it gave two month time to the elected government for bringing the ATA in conformity with the 1973 Constitution.¹

Nawaz Sharif was apprehensive about Chief Justice Sajjad Ali Shah because of the judgement given in favour of his dismissal during his first term by President Ghulam Ishaq Khan.¹ Moreover, Nawaz Sharif also tried to override the superior judiciary in the appointment of Supreme Court judges. The Chief Justice recommended to fill all the five vacant posts of the Supreme Court with elevation of three of the Chief Justices of High Courts along with two senior judges of the Punjab High Court. However, Nawaz Sharif disagreed to promote two of the judges proposed by Justice Sajjad Ali Shah. The main reason was that they had also passed a judgement against the government of Prime Minister Nawaz Sharif during his first term. To counter the Chief Justice, Nawaz Sharif tried to reduce the powers of the former indirectly when a presidential order was issued thus reducing Supreme Court judges from seventeen (17) to twelve (12).

A petition, challenging the Presidential Order was filed in the Supreme Court, because of which the Chief Justice Sajjad Ali Shah issued a stay order.¹ The order was also protested throughout the country by the courts and the Bar Associations alike. Nawaz Sharif was forced for reconsideration of his action and reverse the presidential order. However, Prime Minister Nawaz Sharif was continuously exerting pressure, due to which the differences between the elected government and the higher judiciary increased manifold. However, the arbitration of President Farooq Khan Leghari and Army Chief Jahangir Karamat worked, Nawaz Sharif agreed to the appointment of judges

recommended by Sajjad Ali Shah. This arbitration had been, in fact, a coercive force which the military has been able to use for decades. The role of mediator at the top level of the state institutions reveals the kind of influence which the Army Chief had been enjoying in the decision-making process of the state of Pakistan.

The opposition political parties especially the PPP realised that it was a right time for taking advantage of the situation and filed several petitions in the Supreme Court against the constitutional amendments and legal acts initiated by Nawaz Sharif government thus seeking disqualification of his government. Meanwhile, the government of Nawaz Sharif was successful in creating rifts within the Supreme Court judges. The judges sent a letter to President Farooq Khan Leghari which was signed by 9 out of 12 Supreme Court judges, declaring that the original appointment order of Justice Sajjad Ali Shah, elevating him as Chief Justice of Pakistan was not based on principle of seniority.¹ In fact, Justice Sajjad Ali Shah was appointed by Benazir Bhutto government as Chief Justice of Pakistan by superseding three senior judges i.e., Justice Saad Saud Jan, Justice Ajmal Mian and Justice Abdul Qadeer Chaudhry.¹

The Supreme Court Bench presided over by Sajjad Ali Shah and two adhoc judges, nullified and declared the Fourteenth Amendment as unconstitutional on October 29, 1997. This amendment consisted of anti-defection laws especially for curtailment of the independence of elected representatives during voting in the Parliament against the party interests. The tussle continued as the prime minister publicly criticized decision of the Court in the Parliament which prompted the Supreme Court to take serious notice. A contempt of Court petition was filed against the prime minister in the Supreme Court on October 30, 1997. Moreover, another petition was also filed for the annulment of the thirteenth amendment on October 31, 1997.¹ A three-member bench comprising of Chief Justice Sajjad Ali Shah, Justice Bashir Jahangiri and Justice Chaudhry Mohammad Arif summoned Nawaz Sharif along with eleven other persons on November 3, 1997 to appear before the Court for defence in the contempt of court case.¹ Nawaz Sharif sought a one-month relief from the Court for a written response. However, Supreme Court refused and ordered him to appear in person before the Supreme Court on November 17, 1997. Nawaz Sharif also requested the Court for mercy but the response of Chief Justice Sajjad Ali Shah was that they are not supposed to provide mercy but justice.¹

Prime Minister Nawaz Sharif, instead of complying with the Court orders attempted to persuade President Farooq Khan Leghari for replacement of the Chief Justice. President Farooq Khan Leghari refused in the same way as he had done during Benazir Bhutto government. However, unlike Benazir Bhutto's period, the Supreme Court judges were now divided and could be easily dealt with. President Farooq Khan Leghari warned Nawaz Sharif against the consequences of such manoeuvres but Nawaz Sharif did not abandon his efforts.¹ Meanwhile, the government of Nawaz Sharif passed an amendment to the Contempt of Court Act from National Assembly and Senate on November 17 and 18, 1997 respectively. The amendment gave the affected person the right to file an inter-court appeal

for hearing of his case by judges other than those admitted or heard the contempt petition. However, the Supreme Court ordered the President on November 20, 1997 not to sign bill.¹

The President could retain a bill for 30 days to sign, which he did and later returned it to the parliament for review. However, the Constitution did not allow the parliamentary review in such cases until permitted by the Court. The government of Nawaz Sharif decided for the impeachment of President Farooq Khan Leghari through the parliament along with the removal of Justice Sajjad Ali Shah alleging that the former had also abused his powers by retaining the bill pending for 30 days.¹ As usual, the Army Chief General Jahangir Karamat along with DG, ISI General Nasim Rana intervened in the crisis as an arbitrator. A meeting between the Chief Justice of Pakistan, the President of Pakistan and the Prime Minister was arranged, and Justice Sajjad Ali Shah was asked to withdraw the contempt of court case. Considering it as an insult of his office, the Chief Justice even refused to continue any discussion on the matter. President Farooq Ahmad Leghari made efforts for normalization of the crisis with reference to the prevailing critical conditions of the country which demanded political stability. Upon request, Justice Sajjad Ali Shah agreed for, at least two weeks delay in the proceedings of the contempt of court case.¹

It was a typical and personal war in which 'individual characters' played a key role. The heads of the state institutions strived for superiority over one another and no one was interested to safeguard the state institutions. Nawaz Sharif took advantage of the two weeks relief to make a counter attack against the Chief Justice Sajjad Ali Shah. PML-N government filed a writ petition against the original appointment of Chief Justice Sajjad Ali Shah in Quetta Circuit Bench and a week later in Peshawar Circuit Bench of the Supreme Court of Pakistan.¹ The Quetta Circuit Bench suspended the notification of his original appointment as Chief Justice of Pakistan.¹ The government of Nawaz Sharif sent a summary to President Farooq Ahmad Khan Leghari for signing the removal orders thus recommending Justice Ajmal Mian, the next senior judge as acting Chief Justice of Pakistan. This decision of Quetta Circuit Bench was suspended by a larger bench of Supreme Court with 4 to 1 decision which was headed by Justice Sajjad Ali Shah.¹

The larger bench gave technical grounds that the Quetta Circuit Bench cannot suspend a permanent judge of the Supreme Court. However, if necessary, such cases could be referred to Supreme Judicial Council for consideration. It further held that a Circuit Bench is not empowered to hear a case against the Chief Justice of Pakistan and could hear the cases assigned by Supreme Court of Pakistan only.¹ The crisis further deepened when Peshawar Circuit Bench presided over by Justice Saeed-uz-Zaman Siddiqui held that being party to the case, the Chief Justice is not empowered to hear or issue suspension order of the decision of Quetta Circuit Bench.¹ However, it is noteworthy to mention here that Supreme Court in Jamal Shah Case in 1966 and later in 1988 had declared that the judges of the same court cannot hear cases against each other.¹ However, with the tactics employed by Nawaz Sharif government, the Supreme Court judges, for the first time, got divided into two groups.¹

The grouping resulted in a tug of war among the Supreme Court judges and the battle ground was the press.¹

Farooq Khan Leghari and Sajjad Ali Shah, once met, three times on the same day in which the latter was advised to resign because of losing the support of fellow judges.¹ The Army Chief General Jahangir Karamat, DG (ISI) General Nasim Rana, Prime Minister Nawaz Sharif, Wasim Sajjad (Chairman Senate), Khalid Anwar (Law Minister) and Illahi Bukhsh Soomro (Deputy Chairman Senate) visited the President House at midnight. The prime minister and his law minister presented judgement of Quetta Circuit Bench against Chief Justice Sajjad Ali Shah. Nawaz Sharif insisted on Farooq Ahmad Khan Leghari to sign the order for dismissal of the Chief Justice and the summary for Justice Ajmal Mian to be appointed as Acting Chief Justice.¹ President Farooq Khan Leghari refused signing of the orders because he had obtained some information that suitcases of money have been used by the government for obtaining this judgement. The bribery issue badly damaged the image of higher judiciary for which PML-N government was equally responsible thus resulting in weakening of one of the state institutions.

Chairman Senate Wasim Sajjad, as a constitutional lawyer, declared that the dismissal of the Chief Justice in this case was justified on legal grounds. However, President Farooq Leghari, showing his disapproval, opted to give resignation with a suggestion that the next day Wasim Sajjad as acting President of Pakistan would sign the dismissal order of Chief Justice Sajjad Ali Shah. The Army Chief, DG ISI and Deputy Chairman Senate opposed this arrangement. The Army Chief arranged another meeting on November 28, 1997 in the President House, in which Sajjad Ali Shah advised Farooq Khan Leghari that he should not give resignation and that he would also prefer to fight his battle. President Farooq Khan Leghari expected the restoration of Eighth Constitutional Amendment by Chief Justice Sajjad Ali Shah which would empower him with 58(2)(b) to be able to dismiss Nawaz Sharif government. The Chief Justice, literally did as expected.

Nawaz Sharif appeared before the Supreme Court on November 28, 1997 in contempt of court case. On this occasion, the PML (N) supporters invaded the Supreme Court building in which the senior ministers were also involved.¹ The attack was a tragic incident in the history of Pakistan. The coverage of the media throughout the world became a witness that the PML-N members attacked the Supreme Court building with the backing of the elected government.¹ Chief Justice Sajjad Ali Shah requested the President and Army Chief through different letters to deploy Army and provide security to the Supreme Court of Pakistan. The president while endorsing the demand, forwarded the letter to the prime minister for necessary action. Moreover, the Army Chief also forwarded the letter to the Defence Ministry for appropriate action.¹ Thus, General Jahangir Karamat detached himself to be neutral and let the matter resolve by civilian institutions, mainly because his own interests were not at stake. The Army Chief did not provide protection because that would have given a signal of taking sides. To him, the president and the chief justice were playing the game for personal interest.¹ The government released the letter to the press along with the response of prime minister that there is no

need for calling military to protect the Supreme Court. It really exposed the controversy between the two high offices of the state regarding the issue of judiciary.¹

As they were free from stress of non-intervention of the military, the prime minister, the president and the Chief Justice of Pakistan publicly challenged each other as rivals to maintain their superiority. Nawaz Sharif decided to seek impeachment of Farooq Khan Leghari through the parliament. However, the same day, the Chief Justice had also restored 58(2)(b) in a three members bench that empowered the president with the powers to dismiss the elected government and dissolve the National Assembly.¹ The same day, a ten members full court upheld the decision of Quetta Bench and also suspended the suspension order of 13th Amendment taken by the three member bench under Sajjad Ali Shah.¹ Although, the president knew that he could be impeached and was having the powers to dismiss the elected government and dissolve the National Assembly, Farooq Khan Leghari preferred to give resignation, one year prior to the end of his term in office.¹ This is noteworthy to mention that resignation of the President occurred on the same day when session of the National Assembly was called for his impeachment.

It was surprising in the post Ziaul Haq era that instead of dismissing the government under 58(2)(b), the president chose to resign. The Army Chief knew Nawaz Sharif will deteriorate the political and economic situation of the country. Therefore, he tried to convince Farooq Khan Leghari not to resign, but also wanted the government to continue.¹ It shows that President Farooq Leghari knew that the Army Chief would not stand by his side that is why he resigned. Chairman Senate Wasim Sajjad took oath as acting President of Pakistan. Being a loyal member of the PML-N, he signed the order for the dismissal of Chief Justice of Pakistan very instantly.¹ Therefore, Chief Justice Sajjad Ali Shah was sent home without a reference in his honour. The dissenting judges were also successful mainly due to the support of the government of Nawaz Sharif, to remove their own peer judge in such a disgracing and humiliating manner.

Later, Justice (retd) Rafiq Tarar, who was a family friend of the prime minister and former legal advisor to Sharif Industries was elected as the President of Pakistan. Having no opposition from all sides, Nawaz Sharif became more confident and defeated all his opponents one by one. He made himself quite secure and thus the prime minister virtually became all powerful. Arbitrariness was seen in the exercise of power when Justice Rashid Aziz, the Chief Justice of Lahore High Court went on Ex-Pakistan leave in June 1999. The Chief Justice of Pakistan had recommended Justice Falak Sher, the senior most judge of Lahore High Court for appointment as acting Chief Justice. In clear violation of the judgement of Supreme Court in the case titled: *Al-Jehad Trust vs Federation of Pakistan* and against the recommendations of the Chief Justice of Pakistan, Nawaz Sharif appointed the next senior judge as acting Chief Justice of Lahore High Court.¹

7.2.2 Relations with Military under General Jahangir Karamat and After

Like other elected prime ministers in the past, Nawaz Sharif feared military intervention. Therefore, he demonstrated extra care while dealing with the military establishment thus avoiding any type of confrontation that could cause provocation of the military. Therefore, prior to take up the Thirteenth Amendment in the National Assembly, Nawaz Sharif had consulted the Army Chief General Jahangir Karamat.¹ Nawaz Sharif's government also continued to place military officers on various posts in the civil bureaucracy and other key positions. Nawaz Sharif appointed Lt. General (retd.) Moeen Uddin Haider as Governor of Sindh. The caretaker government had appointed Lt. General Muhammad Arif Bangash as Governor of Khyber Pakhtunkhwa (NWFP), was also retained to the post by Nawaz Sharif's government. When the Air Chief Marshal Farooq Feeroz Khan retired as Chairman JCSC, Nawaz Sharif's government accepted the proposal of Army to allow Army Chief General Pervaiz Musharraf to hold the post of Chairman JCSC as well. Allowing General Pervaiz Musharraf to hold these two offices further strengthened the already powerful position of the Army Chief. In consultation with the senior military commanders, Prime Minister Nawaz Sharif also decided to conduct the nuclear tests in May 1998. The favours given to the military indicated that Nawaz Sharif was not taking any risk to lose confidence and support of the military. Although, the Thirteenth and Fourteenth Amendments had empowered Nawaz Sharif with vast authority, yet he was still frightened of the military intervention.

The military wanted the presidency to enjoy the power of 58(2)(b) for dismissal of the civilian government mainly because it provided them an opportunity to intervene in political affairs without direct involvement. However, still the military allowed the prime minister with a chance to prove his capabilities in accordance with their expectations. The military agreed and showed its willingness to the two percent increase in defence budget. The military didn't demand for the re-establishment of CDNS, which President Farooq Ahmad Khan Leghari had accepted to appease the military commanders. The military did not resist the elected government of Nawaz Sharif in handling of the resignation issue of the Chief of Naval Staff. It was also a strategy to save the image of military because reports of media had highlighted the involvement of Naval Chief in corruption and defence purchase deals.¹ However, the military showed resistance to the attempts of the government for investigation into the corruption charges against the Chief of Air Staff. Taking notice of the propaganda against the military, the Army Chief no longer showed aloofness to the measure of the government for intervention in military affairs. Nawaz Sharif made some efforts to convince the Army Chief that civilian government had no link with that propaganda against the military.¹

Prime Minister Nawaz Sharif sought military's help to curb corruption in various government departments. However, the Army Chief General Jahangir Karamat did not agree to spare his forces for any such assignment. General Jahangir Karamat, while addressing at the Naval Staff College, criticised the policies of elected government thus showing concern over the political instability mainly the worsening ethnic and sectarian violence, anti-opposition measures of the civilian government and grievances of the smaller provinces. The Army Chief was also concerned over the worsening economic situation which was dangerous for the corporate interests of the military.¹ General Jahangir Karamat

demanding the setting up of a National Security Council (NSC) for permanent role of the military high command in the decision-making process which, in his view, would provide stability to the political institutions.¹ To him, there was a need of a neutral and competent civil administration both at the central and provincial levels. To him, Pakistan could no longer afford the destabilising effects of polarisation, vendettas, and insecurity expedient policies.¹ The opposition leaders welcomed the Army Chief's suggestion. They recommended it as a control mechanism over the civilian government due to the parliament's lack of capacity for ensuring a check and balance system in the civil government.¹

The Army Chief was about to meet father of Nawaz Sharif in Lahore to discuss this issue and importance of NSC.¹ However, the prime minister strongly believed in political affairs to be the domain of the elected representative and that the military should be aloof from the political affairs.¹ Moreover, Nawaz Sharif had some information from his sources that the Army Chief General Jahangir Karamat had minimal support of the Corps Commanders and the GHQ. However, it was not clear as to how many of them were favouring him and how many opposing. Nawaz Sharif found it feasible to remove the Army Chief like he had dealt with other heads of institutions like, the Chief Justice of Pakistan and the President of Pakistan. He called General Jahangir Karamat to clarify his statement which he, as an Army Chief, declined because whatever the latter had stated were communicated to Nawaz Sharif several times and there was nothing to add. The battle turned in favour of prime minister, when three months before the due date of his retirement, General Jahangir Karamat sought early retirement instead of withdrawing his statement.

In his first term, Prime Minister Nawaz Sharif had remained submissive to the then Army Chief, General Asif Nawaz Janjua. In his second term, however, Nawaz Sharif seemed more confident as he enjoyed strong majority in the parliament, the president was his handpicked figure, Supreme Court was less effective, and he was having a strong hold on parliamentary members of PML-N. It also appears that General Jahangir Karamat was aware of his weak support from the Corps Commanders. Therefore, instead of confronting with Nawaz Sharif, he preferred resignation from his office. Although resigned, the refusal of Army Chief to clarify his statement was non-compliance to the orders of prime minister and an extra constitutional act. It confirmed that the Army Chief thought that he was superior to the elected prime minister thus publicly undermined the supremacy of the elected government as an institution.

The prime minister appointed General Pervaiz Musharraf as Army Chief in October 1998 who superseded one Pashtun and another Punjabi general.¹ Moreover, the senior most general, Ali Kuli Khan was expected to be appointed as Chairman JCSC to redress the injustice done to him.¹ However, later in his meeting with Shahbaz Sharif and Chaudhury Nisar Ali Khan, General (Retd.) Jahangir Karamat expressed that his colleagues like General Ali Kuli Khan had insisted him to take over the government and not to resign. However, he had decided to follow the Constitution and thus resigned from his post. Due to these reports, Prime Minister Nawaz Sharif decided not to appoint General Ali Kuli Khan as Chairman JCSC, who later resigned. However, General Ali Kuli Khan had denied these

reports.¹ Moreover, when General Pervaiz Musharraf was appointed as new Army Chief, he held a meeting with General Jahangir Karamat. He insisted on General Jahangir Karamat that it was the suggestion of all corps commanders to discuss the need of a NSC with Prime Minister Nawaz Sharif. General Pervaiz Musharraf further stated that he is not in a hurry to assume the office of Army Chief and will also convey it to the Corps Commanders. However, General Jahangir Karamat refused to take any action against the government and advised General Pervaiz Musharraf to take his charge.¹

The prime minister thought that a Muhajir Army Chief, commanding a Punjabi-Pashtun dominated military establishment would be in a weak position to take over the elected government.¹ The prime minister was taking this strategy in terms of Biradari System like the politicians and feudal lords often use it as a policy. His assumption was wrong because the Military is not a democracy where majority exerts pressure on the leadership.¹ The Army Chief, in the hierarchical structure, is the powerful head of the Army and the previous experiences show that the subordinates have always obeyed the chief even if he had resorted to an unconstitutional act for his survival. Moreover, the Army Chief represents the corporate interests of the military, therefore, the successor chief always pursues it irrespective of his ethnic or provincial background. Therefore, the perception of Nawaz Sharif that the military institution can be weakened as he had done with the judiciary proved damaging for his own self. However, initially Nawaz Sharif and General Pervaiz Musharraf were on the same page and the military was exercising special powers conferred on them under ATA for curbing the extremists responsible for bad law and order. The military was granted with powers for conducting investigations and setting up parallel military courts, decisions of which could not be challenged in any civil court.¹ However, the Supreme Court gave a judgement in February 1999 and declared that the military courts were un-constitutional and were hence declared void.¹

Prime Minister Nawaz Sharif, to strengthen the civilian, set up, inducted the military into various government institutions for curbing corruption and improvement in the economic health of the country.¹ Almost, thirty-five thousand junior commissioned and commissioned officers were appointed in Water & Power Development Authority (WAPDA) during December 1998. Moreover, a Lt. General was appointed as the Chairman and a Maj. General as a Vice-Chairman of WAPDA, while the serving Brigadiers were made in-charge of eight transmission companies. The military was assigned administrative responsibilities of Karachi Water and Sewerage Board (KWSB), and the National Database and Registration Authority (NADRA). Education Department of Punjab was also assigned to the military to conduct monitoring of their daily duties, posting and transfers. Serving military officers were assigned key posts in civilian departments like intelligence agencies, police services, civil bureaucracy, Karachi Electric Supply Company and Cholisthan Development Authority. Nawaz Sharif allowed this intrusion of army because he considered General Pervaiz Musharraf as the same pliable Army Chief as Z. A. Bhutto had considered General Ziaul Haq, however, both the prime ministers were mistaken. The situation changed when Army Chief General Pervaiz Musharraf issued an order in March 1999 declaring that in future, the military officers deputed in WAPDA would be conducting

negotiations with the independent power producers. A list of the WAPDA defaulters was also issued including members of PML-N which embarrassed the prime minister in public.

Army Chief General Pervaiz Musharraf wanted to hold the position of Chairman JCSC along with his post as Army Chief. No doubt, this time, the Chief of Naval Staff Admiral Fasih Bokhari was supposed to takeover this post. The Admiral gave resignation six days after the confirmation of General Pervaiz Musharraf as Chairman JCSC and a week before the military coup of October 12, 1999. In fact, he had some information that the Army Chief had decided to dismiss the civilian government. However, it was a clear violation to the oath taken for loyalty to the nation and instead of informing the president, he opted to resign.¹ Nawaz Sharif, initially, did not agree with the desire of General Pervaiz Musharraf, however, he appointed him as the Chairman JCSC in a meeting held on 29 September 1999.¹ Previously, only General Jahangir Karamat had held the two offices of the Army Chief and Chairman JCSC simultaneously.¹ General Pervaiz Musharraf was also made the Strategic Commander of Pakistan's Nuclear Force. The holding of many positions by a person like Army Chief further strengthened his already powerful position. This decision was also in violation of the principle of sharing the responsibilities by the three services chiefs in the form of the office of JCSC. The position of chairman was to be held by the three services chiefs, one after another. However, the demand of General Pervaiz Musharraf for holding both the offices deprived the Chief of Naval Staff of his due right.

7.2.3 Kargil Operation and Turmoil in Civil-Military Relations

The role of Nawaz Sharif in the Kargil Operation¹ became one of the major reason of confrontation with General Pervaiz Musharraf. The controversy regarding the approval of the government to the military for undertaking the Kargil operation still exists. According to General Pervaiz Musharraf, Nawaz Sharif was informed of the military action in Kargil.¹ However, Nawaz Sharif showed ignorance of the move.¹ Due to its disastrous consequences for Pakistan, no one was ready to take the responsibility for this misadventure. This controversy led to a verbal duel between Nawaz Sharif and General Pervaiz Musharraf, that whether the prime minister was fully briefed on launching of the operation in advance or not. Therefore, Kargil operation created an opportunity for the military to takeover in October 1999 thus paving the way for a long military rule in the country.¹

In March 1999, General Pervaiz Musharraf and his team briefed Nawaz Sharif about the situation and therefore two sessions were held on 12-13 March 1999. The briefing highlighted the intensifying activity of Mujahideen inside Kashmir particularly in Kargil-Daras sector. However, it was not revealed that any new operation of Pakistani troops was going on to cross the Line of Control and that only Stinger Missiles will be provided to Mujahideen. In response to the concern of Lt. General (Rtd.) Abdul Majid Malik, the Minister for Kashmir Affairs and of Sartaj Aziz, Foreign Minister of Pakistan; Army Chief General Pervaiz Musharraf told that we cannot take responsibility of Mujahideen

activity inside Kashmir. He further stated that we know Indians, and they will seriously negotiate on Kashmir only in such intense pressure.¹

In fact, the Pakistani troops had initiated the battle by entering the Kargil Mountains and backing the Kashmiri freedom fighters to initiate battle in the Indian held Kashmir. This plan remained a covert one and the Pakistani troops crossed into the Indian territory.¹ With the proofs of ID cards and diaries of Pakistan Army, India confirmed that the attack was not conducted by the freedom fighters and that the regular troops of Pakistan were involved. However, Pakistan denied the presence of its troops in this area. This military adventure derailed the peace process that was initiated after the visit of Indian Prime Minister Atal Bihari Vajpayee to Lahore on 20-21 February 1999.¹ During his visit, both the prime ministers had signed a joint declaration to hold negotiations for peace and stability on the principle of mutual coexistence.¹ Prime Minister Vajpayee also gave his famous statement that we cannot change our neighbours and will maintain peace.¹ However, due to the Kargil operation by Pakistan, the Indian government felt betrayed and the peace process hampered especially after the BJP in government in India under Prime Minister Vajpayee came to an end.¹

General Pervaiz Musharraf has contended in his book 'In the line of Fire' that Prime Minister Nawaz Sharif had been briefed on Kargil Operation on February 5, 1999 during a visit to Neelum Valley. However, Sartaj Aziz, who was present in this visit negates any such briefing claiming that there was no mention of Kargil sector.¹ When the initial clashes of 7th May 1999 were reported in local and international media, General Musharraf and his team called a briefing session for the government on May 17, 1999 about Kashmir, in general, and Kargil, in particular.¹ The civil government was informed that in response to the reports of intensified movement of Indian troops, the paramilitary forces had occupied some Indian posts across the Line of Control in March 1999.¹ The remarks of prime minister were not objectionable, however, he raised concerns about the reaction of Indian troops and its intensity which was responded in positive by General Aziz Khan.¹ However, Sartaj Aziz and Majeed Malik (cabinet ministers) had asked questions about the plan thus expressing their concerns. Their concerns were responded by Army Commanders and even General Pervaiz Musharraf himself, that India will not initiate a war across the international borders, and that the situation in Kashmir will be in control even if a massive war happens.¹

At the end of his discussion on May 17, 1999 meeting, Nawaz Sharif gave an impression that it was a military operation and, therefore, the military thought that the prime minister left the matter to 'the military to decide.' By then, Prime Minister Nawaz Sharif was fully in loop, and Lt. General Mahmood Ahmed regularly updated him about the developments in Kargil. Nawaz Sharif had full authority to stop the operation, had he intended to so however, he did not raise any objection.¹ It is a fact that till that time, the plan had been kept secret even from the military commanders except, General Pervaiz Musharraf, General Mahmood Ahmad, General Aziz Khan and General Tauqir Zia. Prime Minister Nawaz Sharif was not approached until the plan was exposed. General Pervaiz Musharraf initiated it to bring India to table. However, he didn't expect that it will be expanded on such

a large scale.¹ When Nawaz Sharif asked General Pervaiz Musharraf about the heavy losses of 2700 troops (greater than those of 1965 and 1971 wars collectively), his response was that he had not anticipated such retaliation from India.¹ Nevertheless, it exposed the professional capabilities of the Generals working on planning and implementation of this operation. No doubt, General Pervaiz Musharraf was responsible for this ill-planned operation and should have resigned after its failure.¹

The aggressive reaction of the Indian military resulted in heavy casualties both for India and Pakistan. Initially, Pakistan's military was successful in shooting down two aircrafts which crossed into Pakistani Line of Control (LOC) on May 27, 1999 and some helicopters.¹ However, due to the blocked supply lines of food and communication, the pace could not be maintained. The Indian military outnumbered the intruders by deploying more forces, thus resulting in heavy losses to Pakistan in terms of soldiers and army posts. The conflict became severe to an extent where an all-out war was expected on the international borders. Since Pakistan had denied the presence of regular troops in the operations and had termed it as an indigenous uprising of the Kashmiri freedom fighters, Pakistan was also losing its position on the diplomatic front. Nawaz Sharif requested the United States to interfere for resolving the issue.¹ Analysing the gravity of the situation, damages on the part of Pakistan military, and pressure from the United States, Nawaz Sharif decided to unilaterally withdraw the troops engaged across the LOC back to Pakistani territory.

Sartaj Aziz claims that it was General Pervaiz Musharraf's plea, due to which Nawaz Sharif made a telephone call to President Clinton on July 2, 1999 asking him for an early meeting. Before leaving for Washington, a meeting was arranged two hours prior to departure with three services chiefs. General Pervaiz Musharraf was much quitter and did not contradict the reports presented in this meeting about the real situation on the ground. He also agreed that Pakistan should agree to the restoration of the Line of Control, in case President Clinton would be willing to take personal interest to resolve the issue of Kashmir. President Clinton affirmed his commitment to intervene with Indians for resolving Kashmir only if Pakistan will withdraw troops from across the LOC. A draft statement was finalised and Nawaz Sharif signed an accord for the purpose with Bill Clinton on 4 July 1999.¹ The people, in general, assumed that the prime minister has taken the decision under the pressure of the United States.¹ However, according to Bruce Riedel, Director of Near East and South Asia in the NSC, Pakistan had requested for the visit, but the demand of United States was to withdraw troops unilaterally, prior to the meeting with President Bill Clinton.¹

After signing agreement for the withdrawal of the para-military forces from LOC, Nawaz Sharif had to face severe criticism both by the military and the public. Several groups also criticised the military for launching an ill-fated military adventure.¹ However, according to Nawaz Sharif, half of the posts were re-occupied by Indian troops on their side of LOC and therefore, by signing the Washington Accord on July 4, 1999, he had saved the military from a larger debacle.¹ The criticism mounted on the prime minister that why he approved a plan having disastrous consequences. The military was also criticised for an ill planned military adventure. However, the facts about the national security in

Pakistan had never been shared with the masses. Therefore, common people misunderstood the crisis thus blaming Nawaz Sharif to have done mistake by signing agreement with President Clinton. In the view of commoners, the military was heading towards a victory in the battleground but the political leader lost it on the negotiation table.¹

The opposition also criticised Nawaz Sharif to have given away politically, what achievements the military had done in this operation. The opposition, along with others having discarded by civilian government of Nawaz Sharif gathered supporters for a large rally. They accused Nawaz Sharif government of isolating and humiliating Pakistan on the Kargil operation. Due to Nawaz Sharif's self-centred and ill-conceived policies, the country was completely isolated in international community and even its trusted friends like China did not support Pakistan.¹ The religious political parties like Jamaat-i-Islami declared it against the interests of Kashmiri Mujahideen. Declaring it as the only solution to the issue of Kashmir, they argued Pakistan should have openly supported the freedom movement.¹ They launched a strong protest for his removal, claiming that withdrawal of the troops from Kargil was a betrayal by the government of Nawaz Sharif.¹

The military was not happy with the decision of withdrawal from the War since according to them, the prime minister had taken it without consulting the armed forces.¹ Before his departure to Washington, Nawaz Sharif was seen off at the airport by General Pervaiz Musharraf and TV footage showed a friendly nature and understanding between the civilian government and the military. It could have been an effort of the prime minister for avoiding any allegations in future by the military that the former had taken the decision without consultation with the latter, but unfortunately the situation went against him.¹ Moreover, the mutual understanding can be confirmed in the light of the Army Chief's later statement that Nawaz Sharif had discussed the matter with him prior to the decision.¹ General Pervaiz Musharraf is reported to have given a briefing to Nawaz Sharif on the situation thus leaving the decision to be taken by the latter. To the Army Chief, "whether to withdraw or not is a political decision and I am afraid you will have to take that decision."¹ It appears that Army Chief allowed the prime minister to seek support of Washington to arrange a ceasefire and withdrawal from the front. However, he would have been in a strong position, had he opposed the withdrawal of the military from Kargil, but he did not.

Moreover, by leaving the political decision to the prime minister, General Pervaiz Musharraf was not ready to take the responsibility. Pervaiz Musharraf shifted the entire blame to the premier of which, Nawaz Sharif, being head of civilian government, could not escape. The situation provided Prime Minister Nawaz Sharif an opportunity to refute from the responsibility and disclose that the military had started the operation without the consent of civilian government. However, it was also humiliating for a prime minister that the state institutions were not under the control of his government.¹ Therefore, Nawaz Sharif was not able to oppose the Army Chief publicly and could not ask the subordinate institutions to work within their limits exposing, thus, the weak role of civilian leaders. Ultimately, this expediency initiated by the military caused Nawaz Sharif's removal from his

office. As prime minister of Pakistan, had Nawaz Sharif exposed the ill-planned and a miscalculated operation of the Army Chief and had removed him two or three weeks after the Kargil Operation, he could have saved his civil government from dismissal by the Army Chief. There would have been no resistance to removal of General Musharraf even from within the military, because he had not taken all the military commanders and the services chiefs into confidence before launching this expediency. However, such actions would have also weakened Pakistani position on Kargil operation thus confirming the Indian view of the situation resulting in a bad name for the entire military.¹

7.2.4 Removal of Army Chief General Pervaiz Musharraf and Military's Retaliation

The tension increased between Nawaz Sharif and the Army Chief as the PML (N) supporters blamed the latter responsible for the Kargil issue. The Kargil issue thus proved to be the cause of tension and the relations between Nawaz Sharif and General Pervaiz Musharraf never normalized. The premier had sent Shahbaz Sharif, Chief Minister Punjab, as a follow-up of July 04, 1999 Accord to the United States on September 14-20, 1999. In fact, Nawaz Sharif was under the fear of a military intervention and wanted assurance from the United States administration for the support to the continuity of his elected government in the face of mounting pressure from the military.¹ The US State Department condemned the high-handedness against anti-government demonstrations and a warning against any effort to derail the elected government in Pakistan.¹ However, BBC commented on the statement that it does not rule out a change of civilian government through the military.¹ Though, the statement might have added confidence to Prime Minister Nawaz Sharif, it could not block General Pervaiz Musharraf for more than a few months from taking over the government. The civilian leader who had saved the country from an all-out-war with India was deposed by the person responsible for an ill-planned and badly executed operation in Kashmir. General Pervaiz Musharraf, who had severely damaged the cause of Kashmir became a legitimate ruler of Pakistan for nine years.¹

The popularity of Nawaz Sharif government had already been declining due to the heavy dependence of his government on the military to improve administration and economic conditions of the country. This strategy had served his purpose temporarily but had completely diminished credibility of civilian government in future.¹ It proved detrimental and increased interference of the military in the civilian affairs. It also resulted in losing control of the civilian government over to the military which was now heading some of the civilian departments directly. However, the civil society has shown reservation over his accumulating of all powers.¹ In this situation, Prime Minister Nawaz Sharif committed another mistake by appointing General Pervaiz Musharraf as Chairman JCSC in addition to his own duties as Army Chief thus extending his tenure up to October 16, 2001. In fact, Nawaz Sharif wanted to assure Army Chief of no intention of his government to remove him, so that any possible military coup could be avoided. However, a day after his appointment as Chairman JCSC, General Musharraf issued a press release that no deal has been made with the civilian government for this elevation, and that he cannot analyse whether the decision of the elected government will give greater stability to the politics in Pakistan.¹

In August 1999, General Musharraf had visited all formation and corps commanders' headquarters to obtain their support for a counter coup in case any action is taken by government against him. General Musharraf has also admitted that he convinced his colleagues that after the forced resignation of General Jahangir Karamat, this time, the military would not allow any humiliation if the prime minister would take any action against him. However, the agreement was that the military would react only and that it will never act unilaterally. Another unhealthy event occurred, when General Pervaiz Musharraf called an explanation from Lt. General Tariq Parvez, Corps Commander Quetta and brother of Federal Minister Raja Nadir Parvez on October 7, 1999 for meeting with the prime minister.¹ He was transferred to GHQ in Rawalpindi, but he resigned in protest. Three days later, when General Pervaiz Musharraf had left for his visit to Sri Lanka, General Tariq Parvez issued a statement to the newspapers that he did not meet prime minister and had not resigned rather he was forcefully retired.¹

In fact, it was this incident which further strengthened the commitment of Prime Minister Nawaz Sharif thus launching an attempt to replace Army Chief General Pervaiz Musharraf with Lt. General Ziauddin, DG ISI, in the evening of October 12, 1999.¹ General Pervaiz Musharraf was on his way back to Pakistan from Sri Lanka, when Nawaz Sharif dismissed him from the post of the Army Chief. The Army Commanders, while reacting to this action of Nawaz Sharif, initiated a military coup by taking the Prime Minister House in control successfully thus putting Nawaz Sharif in custody along with the newly appointed Army Chief General Ziauddin. The Army also took control of the Karachi Airport and despite the orders of civilian government not to allow the plane, the pilot could land at the Karachi airport. However, Nawaz Sharif claimed that by that time he was arrested and somebody else might have given the orders.¹ In fact, Nawaz Sharif was not aware, but the army commanders had already developed a plan called 'Solidarity Operation' in their meetings on 17 and 24 September 1999. It was to be launched as a counter coup in case General Pervaiz Musharraf was removed by Nawaz Sharif.¹

Nawaz Sharif had been underestimating the powers of the army commanders that in the absence of the Army Chief, they would be abiding by the orders of the prime minister. Moreover, he did all to replace General Pervaiz Musharraf without taking other generals into confidence. The military was not happy with the resignation of former Army Chief General Jahangir Karamat and Nawaz Sharif's intentions for obtaining complete control of the state power through thirteenth Constitutional Amendment. The Indian Prime Minister's successful visit to Pakistan, signing of the Lahore Declaration had led the military to speculate that by consolidating his ties with India, Nawaz Sharif was trying to offset the influence of the military in the civilian affairs both internal and international. Therefore, the military commanders in their view found enough reasons to strike a military coup. Moreover, General Pervaiz Musharraf was compelled to overthrow the elected government in response to Nawaz Sharif's second move against the leadership of powerful military. The military commanders stood by his side showing loyalty to their Chief and refused to accept appointment of Ziauddin as army chief.¹ Though General Ziauddin was the senior most after General Pervaiz Musharraf, but it proves that the forces respect skills not 'the genes or brotherly' only.¹

However, the pace of military intervention proves that it was not a retaliation and some planning was already undergoing against the civilian government. In fact, Brigadier Salahuddin Satti, the Commander of 111 Brigade in Rawalpindi Corps had carried out a secret exercise in September 1999 to identify the target locations which had to be occupied during the military coup. The targets were also assigned to the officers of his brigade in advance who were ready to act quickly.¹

Appointment of the Army Chief in Pakistan has always been a discretion of civilian head of the government under the Constitution. Moreover, appointment of a junior in the list of Lt. Generals like Ziaul Haq had also been accepted by the military in 1976. However, this time the military commanders who led the military intervention were the planners of Kargil Operation. Moreover, army commanders who were apprehensive of the forced removal of Army Chief General Jahangir Karamat were not willing to allow the prime minister for repeating the action once again and establish a precedent. Other commanders who, though reluctant to stage a military coup, were compelled to follow the orders because by relieving General Tariq Parvez, Corps Commander Quetta of his duties, they had received the message to be loyal to the Army Chief. He had been forcefully kept out of loop in military affairs by General Pervaiz Musharraf as he had questioned his decision of Kargil Operation to have been taken without consultation with all corps commanders. General Pervaiz Musharraf was the manifestation of all powerful position of the Army Chief. It was clear that had the civilian government investigated the Kargil issue, General Pervaiz Musharraf and his close aides involved in Kargil episode would have been in trouble. Therefore, it confirms that the Army Chief had already planned to block such efforts by the elected government. He had appointed his close aides on key positions being important for the imposition of military coup.¹ This was the main reason they resisted the dismissal of Army Chief by the prime minister to save themselves from accountability and their institution from the interference of civilian government.

The efforts of Nawaz Sharif to dominate all the state institutions one after another was finally counteracted by the military commanders. His efforts led to another bloodless military intervention by removing another elected government in the history of Pakistan. The military intervention was welcomed by the public, especially the extremist religious groups who considered the military as their support base.¹ General Pervaiz Musharraf declared that the military had not conducted any coup rather it was a counter-coup against the civilian government. He contended that the coup was already initiated by the former government against the military while the latter didn't initiate any plan itself.¹ The fourth elected government in the post Ziaul Haq era of democratisation was ultimately removed. The newly adopted pattern of military intervention from behind the scene was again converted into a direct removal of the elected government. The democratisation process for transfer of complete authority to civilians and for the sake of a true democracy was thus halted once again prior to its consolidation into a strong and stable system.

Generally, the people welcomed the military intervention and removal of Prime Minister Nawaz Sharif.¹ Benazir Bhutto had already started efforts to get the government of Nawaz Sharif

removed by any means. Joining the Pakistan Oppressed Nations Movement (PONM), she requested the leaders of regional parties to extend their cooperation in this regard, which they refused mainly on the plea not to give the military another chance of intervention.¹ In an interview with BBC on October 13, 1999 Benazir Bhutto welcomed the military coup and declared General Pervaiz Musharraf as a neutral person. However, she insisted that general elections should be held within ninety days and that she can offer her role in defusing the crisis,¹ thus trying to contact the military leadership but in vain. Qazi Hussain Ahmad, leader of Jamat-i-Islami also declared on October 14, 1999 that military intervention had become inevitable but insisted that a caretaker civilian government should be appointed. Other opposition leaders, extending their support to military coup were Maulana Fazlur Rahman (JUI-F), Altaf Hussain (MQM), Tahir-ul-Qadri (PAT) and Ijaz-ul-Haq of PML.¹ Majority of the opposition political parties later joined hands with General Pervaiz Musharraf in the quasi civilian set up after the 2002 general elections.

The US State Department issued a statement on October 13, 1999 declaring that the United States has tried to restrain Prime Minister Nawaz Sharif. However, he could not control the crisis. The spokesperson termed the military coup as not a surprise for US and hoped respect for the Constitution and restoration of democracy will be given a preferential treatment by the military regime. Other western powers made almost similar statements. The reaction of opposition parties reminded the nation of the same jubilation which the PNA leaders had shown when General Ziaul Haq had imposed martial law on July 5, 1977 by removing the elected government of Z. A. Bhutto. The opposition had expected fresh elections within 90 days. Contrary to their expectations, General Ziaul Haq had adopted the policy of postponing the elections thus paving the way for his eleven years long rule.¹ General Pervaiz Musharraf used almost the same tactics, thus prolonging his stay in power for eight long years.

General Pervaiz Musharraf assumed the office of Chief Executive of Pakistan, promulgated the Provisional Constitution Order (PCO) and imposed emergency on 14th October 1999. Nawaz Sharif was facing charges of criminal conspiracy, highjack, kidnapping, attempted murder of Army Chief and plotting to wage war against the state.¹ As he was convicted on 10th April 2000, he had to conclude a deal with the military regime and went in exile to Saudi Arabia on 10th December 2000 for ten years. In December 1999, Syed Zafar Ali Shah filed a constitutional petition in the Supreme Court against the military coup.¹ Apprehensive of an unfavourable judgement by the judges against the military takeover, the judges were asked to take a fresh oath of their offices on 25th January 2000. Six Supreme Court judges including Saeed-uz-Zaman Siddiqui, the Chief Justice refused to take the oath. At least 13-judges of superior courts either refused to take oath or were not invited to do so.¹

After hearing the petition for four months, Chief Justice Irshad Hassan Khan led Supreme Court compromised once again when in his judgement of 12th May 2000 he upheld the military takeover of 12th October 1999. The judgement gave General Pervaiz Musharraf a period of three years for achieving his declared objectives.¹ Although, the General met the Court requirement of holding the elections before the completion of the three years mandated term, yet he could get himself elected as

President of Pakistan through the referendum of April 2002. This was followed by general elections on 10th October 2002 that brought to the fore a corps of likeminded politicians willing to fit itself in the power sharing arrangement devised by the military.¹ It shows that military in Pakistan has always availed the opportunity of taking over the government and the higher judiciary has not played its role to challenge the military and invalidate its extra-constitutional action.

Notes and References:

Chapter - VIII

CONCLUSION, FINDINGS AND RECOMMENDATIONS

8.1 Background of Military Takeover by General Ziaul Haq

A democratic system to sustain needs joint efforts of both the people and their leaders. After independence in 1947, the experience of Pakistan with democracy has never been smooth and encouraging. Poor performance by the elected institutions created an opportunity for the non-political forces to intervene either directly or indirectly in political affairs. Military was gradually drawn into the mainstream by parties on sheer antagonism for those ruling the polity. Gradually, military became a significant actor in the political decision-making processes. The strength of politicians or an elected government is rooted in popular support which only comes through service delivery by the government. As this factor is substantially lacking in Pakistani politicians, the adventurers found gaps and ultimately took over the government. In this situation, the role of higher judiciary has not been pro-democracy in terms of countering the extra constitutional interference and regime change in Pakistan's political system.

Zulfiqar Ali Bhutto, being the architect of 1973 Constitution, did whatever he could to bring an end to the military's getting into the corridor of power. While drafting the Constitution, Article 6 was specifically inserted to eliminate the chances of military intervention in future. After the promulgation of the Constitution, however, 3rd, 4th and 5th Amendments were specifically introduced by Z. A. Bhutto government to give superiority to the executive over the judiciary. As a result, an over strengthened executive culminated into an autocratic style and the nominal balance maintained by the separation of powers also got disturbed. The rivalry among judges helped the government to increase its control over the appointment, promotion and transfer of judges.

The politics of agitation by Pakistan National Alliance (PNA) over the alleged rigging by Bhutto government in 1977 general elections proved detrimental for democracy. The civilian institutions proved weak when the military was called in to support the government. It was mainly because the amendments to the Constitution were meant to strengthen individuals and not the system. Like his predecessors, General Ziaul Haq realised that the civilian government of Z. A. Bhutto was relying on the military support in dealing with crisis. Therefore, despite all precautionary measures in the Constitution, the inevitable happened and Martial Law was imposed in July 1977.

8.2 Consolidation of Power by General Ziaul Haq

The military rule in Pakistan, except that of General Yahya Khan (1969-1971), has always of been long duration. However, the tenure of General Ziaul Haq was an exception as he stayed in power for the longest term (1977-1988). But, unlike his predecessors, General Ziaul Haq who was elevated as Army Chief by superseding seven senior Generals, was not prepared to rule for long when he assumed the power by bringing the military back into politics. No doubt, there was a grudging admiration for the transformation of General Ziaul Haq from a simple soldier to a cunning politician who outwitted the opposition by the uncertainty and unpredictability of his manoeuvres and manipulations.

Fearing a backfire from Bhutto as the prime minister would be (if returned to power again), General Ziaul Haq postponed the elections. After all, what Bhutto had to do was to invoke Article 6 of the Constitution against General Ziaul Haq for his act of high treason. Therefore, the General devised a strategy to initiate criminal cases and use the Court for his physical elimination. Indeed, Z. A. Bhutto was judicially victimized during the trial through the aggrieved judges such as, Justice Maulvi Mushtaq Hussain, the Chief Justice of Lahore High Court and then Justice Anwarul Haq, the Chief Justice of Pakistan. Indeed, the weakness in the judiciary as an institution was used as a tool by the military to get the execution order of Z. A. Bhutto passed. Having the spirit of a democrat, Bhutto neither filed a mercy petition nor concluded any deal with the military dictator to seek a relief. As President, General Ziaul Haq had power to grant mercy, but he turned down all the appeals of international community for pardoning Z. A. Bhutto. Feeling no need of the politicians, General Ziaul Haq dismissed the cabinet two weeks after the execution, to drop the PNA ministers and formed a new cabinet.

The military regime received the blessings of the higher judiciary from the very beginning. However, to oblige the judges and somehow pave the way for legitimisation of military rule, the Chief Justices of all the High Courts were appointed as Provincial Governors of the respective provinces. The strategy also helped the regime in the appointment of acting Chief Justices in High Courts who could be easily manipulated. In clear violation of the constitution, the Chief Justices of Pakistan, Justice Yaqoob Ali Khan and later Justice Anwarul Haq provided extra official consultation to General Ziaul Haq on vital legal issues and the steps required in this regard. This is strange that the chief justices did not realise that sooner or later, they would be presiding over the Bench to decide the legality of the changes brought to the Constitution by the military dictator.

The Supreme Court judgement in Nusrat Bhutto Case 1977 resulted in the derailment of democratic process in Pakistan for the coming eleven years. The judgement proved devastating as it provided a blanket cover to the imposition of military rule by General Ziaul Haq. Once again, the malfunctioning of civilian executive had allowed the military an opportunity of intervention whereas the judiciary took no pain while providing protection to this action. However, while criticising the negative role played by the higher judiciary and the military, one cannot ignore the incompetence,

malfunctioning, autocracy or authoritarianism on the part of civilian executive which provided opportunities to the military for intervention in politics.

Unlike other organs of the state, the higher judiciary was initially allowed to function but with no power to challenge the martial law regime. However, the favours and concessions granted by the judiciary encouraged General Ziaul Haq to reward the favourable judges. On the other hand, unlike their predecessors, majority of the superior courts judges tended to oblige the executive without any regard to the dignity and independence of judiciary. Control over the higher judiciary was inherent in the logic of extending the hegemony of the military over the state institutions. Therefore, such practices also helped the military regime to assault the independence of judiciary and degrade its standing by employing different tactics.

The Supreme Court authorized General Ziaul Haq for making constitutional changes on his will. Justice Dorab Patel holds that the words, ‘including the power to amend it (the Constitution)’ were added to the judgement by the Chief Justice after getting the copies signed from members of the Bench. The judgement proved a blessing in disguise for General Ziaul Haq and he interpreted it for granting unrestricted power to amend the Constitution. As a result, many provisions of the 1973 Constitution were either kept in abeyance or altered through various constitutional changes made by martial law regime for its personal benefit. In fact, General Ziaul Haq had little respect for the 1973 Constitution and democracy. Therefore, with the dictator in power and judiciary being browbeaten, the Constitution was literally torn into smithereens.

The military regime had been exercising state powers beyond the extent granted to them by the judiciary in Nusrat Bhutto Case. As the punitive actions of the military regime against the opponents increased, the people had to turn to the courts to challenge its authority of detentions and seek relief against the decisions of the military courts. The High Courts exercised the right of judicial review under Article 199 and continued to manifest its resilience as a countervailing force to the executive power of the martial law regime. Occasionally, the courts acted like real independent bodies. In certain cases, the courts attempted to review the actions taken by military regime and questioned the judgments of military courts.

However, the optimism of judges proved wrong as the military regime reacted by restricting the power of courts through different measures adopted between 1979 and 1981 thereby rendering them ineffective. The Chief Justice of Pakistan, Anwarul Haq and Chief Justice of Lahore High Court, Mushtaq Hussain felt no hesitation while playing an active role in the preparation of draft constitutional amendments in this regard. The amendments also caused detrimental changes in the structure of the higher judiciary. Although, the superior courts were allowed for exercising their respective powers and jurisdictions, yet, no court or tribunal could pass any order or judgment against the military courts, the proclamation of military rule or any order made in pursuance of such proclamations. However, despite

being browbeaten, the superior judiciary continued to work under the 1973 Constitution and exercised its power of judicial review.

Public pressure started mounting on the Supreme Court by early 1981 to act against the arbitrary use of powers beyond their authority by the martial law regime. General Ziaul Haq had realised the anti-regime sentiments of the civil society and a possible review of Nusrat Bhutto Case. To him, the judiciary was an instrument of the state meant to facilitate the execution of the writ of the government rather than restricting its authority. The promulgation of constitutional changes through the Provisional Constitutional Order (PCO) 1981 produced far reaching effects. Now the courts could no longer hear appeal against the decisions of military tribunals. Moreover, it could not question the detentions, actions and orders of the martial law administrators including amendments to the Constitution. The PCO put a formal end to the necessity based regime with a limited period, as sanctioned by Nusrat Bhutto Case.

It did not end here and a fresh oath of office taken from the judges was another punishment which further embarrassed the judges of superior courts. The result was that the judges who refused or were not required to the regime had ceased to hold their offices. A total of 19 judges of Supreme Court and High Courts including those who had collaborated with General Ziaul Haq in legitimising his military coup and hanging of Bhutto, had ceased to hold their offices on March 25, 1981. General Ziaul Haq, while sacking the superior court judges, declared that the military regime wanted the judiciary to mind their own business and refrain from interfering in executive business.

Indeed, the PCO had transformed the martial law regime into a martial state. Justice A.R Cornelius, the former Chief Justice of Pakistan declared the unfortunate episode of PCO 1981 as “the rape of the judiciary.” The PCO 1981 was a document that had few parallels in the world and which institutionalised the unfettered arbitrary power of a single man that not only restricted powers of judiciary but arbitrarily removed the unwanted judges as well. In addition, fundamental structural changes were introduced in the institution of judiciary with far reaching effects even after the martial law was lifted in December 1985. Indeed, the outrageous measures of General Ziaul Haq became formidable blockades in the independence of judiciary in Pakistan.

The Revival of Constitution Order (RCO) 1985 added a new institution to the structure of judiciary, called the Federal Shariat Court (FSC). It was empowered with constitutional powers to review the laws to bring them in conformity with, and to declare any law invalid, if found repugnant to the principles of Islam. It not only shows General Ziaul Haq’s lack of confidence in the Supreme Court but was also meant to reduce the powers of the Chief Justice of Pakistan. Ironically, when the FSC declared some of the laws repugnant to Islam, either the Chief Justice was removed or appeals were filed in the Supreme Court because the verdicts had threatened the planned objectives of General Ziaul Haq.

The RCO also inserted certain detrimental provisions which had somehow allowed removal of the judges by the executive, thus undermining the role of the Chief Justice of Pakistan. Now a High Court judge could be transferred to another High Court and could also be appointed as a judge of the FSC. If a judge would not accept such transfer or appointment, he will cease to be a judge and deemed as retired. Moreover, a judge of the FSC was to be appointed for three years, extendable by the president only and could be removed by the president anytime without providing any reason. The judges whom the military regime and later the civilian governments wanted to punish, were transferred to the FSC.

The judiciary and military both fall under the command of the president under the Constitution, but modalities are different for both as the judiciary has a little role in the implementation of orders given. However, the military has the power of making decisions and taking either direct or indirect action for implementation of the decisions. The higher judiciary can interfere in internal affairs of every civilian institution. However, the decisions of judiciary are effective only if implemented by the executive. Moreover, the weakness of individual in capacity, intentions, corruption subjugates the judges to be submissive to the appointing authority. In cases of execution of Z. A. Bhutto and validation of General Ziaul Haq martial law, the judges involved were either biased towards the former or the beneficiaries of martial law regime.

The totalitarianism in General Ziaul Haq's approach was not giving a positive support to the military, still, the tenure of General Ziaul Haq proved an exception, as he stayed in power for the longest term (1977-1988). Unlike his predecessors, General Ziaul Haq was elevated as Army Chief by superseding seven senior generals, and was not prepared to rule for long when he assumed the power. But, a wider social, religious and institutional support was providing a base for the military regime to carry on its long-term agenda. Moreover, due to an expected public resentment against General Ziaul Haq on the execution of Z. A. Bhutto, the political analysts believed that General Ziaul Haq was prolonging his stay in power to present a cleaner view of him in the public eye.

The General hoped to create a popular base by eliciting mass support for Islamization being implemented by his military regime. Moreover, he established a shadow democracy of local bodies, elections to which were held in December 1979, 1983 and then in 1987. However, the popular enthusiasm for this ambitious endeavour was not forthcoming, which became a major concern for General Ziaul Haq. He realized in the mid-1983 that though some extreme repressive measures including whipping the opponents had been taken, the Movement for the Restoration of Democracy (MRD) had not only survived but had become more strengthened. To make his position secure, General Ziaul Haq held a

referendum in December 1984 which was later interpreted as an approval for his continuation as President of Pakistan for the next five years. This, in fact, was meant to institutionalise his role in the civilian structure as president and maintain hold over the armed forces.

8.3 Sharing of Power with Premier Muhammad Khan Junejo

The Local Bodies System and the Federal Council (Majlis-e-Shoora) had brought to the mainstream a new class of political leaders. Many of them eventually got elected to the National and Provincial Assemblies through the February 1985 non-party elections who actively supported General Ziaul Haq. Like General Ayub Khan, General Ziaul Haq also sought constitutional protection before the civilianization of his military regime. His proclamation of RCO after the non-party elections in the first week of March 1985 and the later acts revealed that he never intended to leave the corridor of power.

Being a shrewd person, Ziaul Haq agreed for the restoration of an elected setup, the sort of elected assembly that would put a parliamentary stamp of approval to the constitutional changes. Thus, before the lifting of martial law in December 1985, General Ziaul Haq being the CMLA and President of Pakistan could secure approval of the Parliament for his controversial 8th Amendment to the Constitution of 1973. The parliamentarians elected on non-party basis opted to validate all martial law regulations, orders and presidential ordinances; the doers of these actions were given indemnification. This approval was also due to the boycott of true democratic forces, the defenders of democracy, like PPP and others of the 1985 elections.

Unlike the original version of the Constitution, the Amendment had tilted and imbalanced the power in favour of the president vis-à-vis the prime minister. Even, he could appoint any member of the National Assembly as prime minister if, in his opinion, the person was likely to command the support of majority of the parliamentarians. Moreover, amendment to the Political Parties Acts 1962 had barred the parliamentarians from joining an unregistered party. Despite some differences between General Ziaul Haq and Muhammad Khan Junejo, the parliamentary leadership provided considerable benefits to his military regime in this power-sharing arrangement. The setup was providing a cover to the holding of power by the military and was not seriously threatened. However, Junejo had struggled to assert a certain degree of freedom, an attitude which had perturbed General Ziaul Haq.

In fact, the elected government had started to create an embarrassing situation for the military. Therefore, the government of Muhammad Khan Junejo was the first to face the consequences of the arbitrary changes to the Constitution. The coalition of the civilians with the military lasted until a few months before the death of General Ziaul Haq. The power of Article 58(2)(b) was used for the first time by President General Ziaul Haq against the same National Assembly in May 1988 which had

passed it. As a result, the power sharing arrangement was dismissed by the one who had created it and needed it the most for his own survival. General Ziaul Haq's decision to dismiss the civilian government along with the assemblies was a gross error of judgment and calculation. By dismissing the government along with the Assembly, General Ziaul Haq though, regained absolute power but also lost respect and legitimacy which he had gained through the revival of quasi-parliamentary system.

It is surprising that General Ziaul Haq with his capacity of manipulation and ill tactics deprived himself of the opportunity to leave behind a favourable last impression in the masses. It was not difficult for General Ziaul Haq to have adopted a more sophisticated approach by replacing Muhammad Khan Junejo by more pliable premier from within the Muslim League in the National Assembly. By doing this, his supporters would have been able to maintain the view that he was bringing Pakistan back to democratic system gradually with the originally scheduled fresh elections after completion of five years term by National and Provincial Assemblies in 1990. However, by dismantling a submissive legislature which was the product of party-less elections in February 1985, General Ziaul Haq removed the impression of a phased transfer of power to the elected government. It proves that if he could not share power with his handpicked and docile prime minister and if he could not tolerate his assertion of authority in the mandated sphere, how could he agree to the transfer of power in an orderly and peaceful manner.

The General didn't know that he would not see his promise of holding 1988 elections materializing as he died in a mysterious airplane crash in August 1988. No doubt, the Army Chief, General Ziaul Haq had come into power in July 1977 promising fresh elections, a similar promise was made in 1988, two and a half months before his death in a plane crash. In 1977, Ziaul Haq established an interim government and likewise, in 1988, he died as a head of caretaker government without appointing a caretaker prime minister. Eleven years after his military rule, Pakistan appeared to turn a full circle from where it had started. The manoeuvrings of General Ziaul Haq shows that he had ruled less as a representative of the military interest and more as a man with his own ideas and ambitions. However, his exit from the political scene brought fundamental changes in the polity and its institutions.

8.4 The Post Ziaul Haq Democracy

The political history of Pakistan shows that major crisis in the past had brought chaos and confusion but the sudden exit of General Ziaul Haq from power did not create any turmoil. Contrary to the apprehensions, Pakistan witnessed its first ever peaceful transfer of power to the elected government in 1988. The power vacuum provided the new Army Chief General Mirza Aslam Baig an opportunity for paving the way for an elected government in Pakistan without the umbrella of an army president as head of the state. The political clock of Pakistan began to tick faster with the transfer of

power to the Chairman of the Senate Ghulam Ishaq Khan, who took over as an acting President of Pakistan. The acting President announced that the general elections will be held as scheduled in November 1988. The non-interventionist role of the military, rare in the history of Pakistan, provided credibility and strength to the Acting President's assurance to hold free, fair and impartial elections to the National and Provincial Assemblies.

No doubt, the military had become strengthened during the reign of General Ziaul Haq and it was difficult to question the actions of their peer. The pressure of democratic political parties, sudden demise of General Ziaul Haq and the public opinion created an atmosphere in which the judiciary established its writ through a historical judgment. Thus, Supreme Court now out of the clutches of military establishment could take a bold and timely decision in the case titled: Haji Muhammad Saifullah Khan vs Federation of Pakistan. It declared the action taken by the then President Ziaul Haq as unconstitutional thus confirming its malafide, illegal and arbitrary nature and further reduced his political stature.

However, General Mirza Aslam Baig had written a letter to the Supreme Court of Pakistan that the dissolved National Assembly should not be reinstated. It proves that an anti-democratic role was played by the apex court and that the Army Chief committed an unqualified interference in the judgment of the Court. When Mirza Aslam Baig took a stand on his words, though found guilty of contempt of court, was allowed without any sentence declaring that he had already been reprimanded in the Court. These developments disclose the weaknesses of judiciary vis-à-vis the military as it was not able to deliver justice and take an independent decision in the matter.

The amendments to Political Parties Act 1962 as challenged by Benazir Bhutto in the case titled: Benazir Bhutto vs Federation of Pakistan 1988 were declared as illegal and unnecessary. The judgement eliminated any distinction between registered and unregistered political parties, thus allowing all political parties for contesting the general elections in 1988. With the prospects of party based general elections, the coup d'état and debacle created by General Ziaul Haq faded quickly into history. Moreover, it frustrated the remanence of the General that had planned to build a case for his martyrdom and exploit his legacy for their success in 1988 elections. The stamp of loyalty to General Ziaul Haq on some of the candidates in the 1988 elections sealed their political fate.

Ghulam Ishaq Khan had the discretionary power to appoint a prime minister of his choice. The 8th Amendment also facilitated the military high command to collaborate with the president and assume the role of king maker. Now, the civilian president was bound to protect the organizational interests and institutional independence of the military. Benazir Bhutto could take oath as prime minister only when she agreed to fit herself within the parameter chalked out by the military. In the post Ziaul Haq period, the military preferred to stay behind the scene and avoid direct takeover of the civilian government in case its organizational and corporate interests remain secured and unthreatened. No doubt, the Generals were looking forward to reasserting their direct role at some suitable time.

Instead of creating political stability, powers under the Eighth Amendment has been used in an inconsistent way to create instability. There are solid evidences to suggest that the three-successive dissolution of the National Assembly were not free of biases. The military commanders and the President of Pakistan had acted in concert to dislodge, at least, three civilian governments i.e., in 1990, 1993 and 1996. The civilian governments were not allowed to complete their mandated tenures thus resulting in dissolution of four National Assemblies in eight years. The political leaders were suspicious of the office of the President for being “militarised” and used by the military to protect their corporate interests. No doubt, Ghulam Ishaq Khan and Farooq Ahmad Khan Leghari as presidents could not maintain offices entirely free of such influences by the military. The weak, anxious, non-independent, and unsteady civilian governments were doubtful of a powerful president. Only those civilian governments could survive which were approved by the military and when the latter chose to be neutral, President Farooq Ahmad Khan Leghari was forced to resign.

Apprehension of the elected governments against the military domination had never been baseless. Army Chief General Mirza Aslam Baig was quite assertive and he publicly criticised the elected government’s policies. The capacity of the Army Chief to question the initiatives of the elected government speaks of the military’s standing in the Pakistani styled democracy. The elected government of Benazir Bhutto and Nawaz Sharif feared the direct military intervention. Although, General Asif Nawaz Janjua maintained a policy of non-interference in politics, yet he remained unsupportive to Nawaz Sharif government mainly because the latter had not supported his appointment as Army Chief. General Jahangir Karamat also openly condemned the working of elected government and criticized the poor economic management and the bad law and order situation. The assertive role of the Army Chiefs and their public statements like politicians remained a reason for scariness of the elected governments in the post Ziaul Haq era. Whenever the elected governments tried to exceed their limits, they were indirectly fired through the powerful Presidents, often supported by the higher judiciary in granting validity to their dismissal orders.

Both Ghulam Ishaq Khan and Nawaz Sharif were a product of Ziaul Haq regime. Therefore, initially the president as well as the military supported Nawaz Sharif. However, when the military decided to remain neutral, the Supreme Court found an opportunity to challenge the order of the president for dismissing an elected government. No doubt, General Abdul Waheed Kakar remained neutral, because it would have given an impression that a Pashtun General has sided with a Pashtun President. However, the remarks of the only dissenting judge, Justice Sajjad Ali Shah (Sindh) also proved that a Punjabi dominated court had sided with a Punjabi prime minister. Previously, two prime ministers from Sindh were dismissed under the same Article of the 1973 Constitution. Even the second dismissal was by the same president, but the Court had upheld both the decisions. However, it is also noteworthy to mention that the contexts of the two dismissals were different. The dismissal of Nawaz Sharif government was primarily meant for Ghulam Ishaq Khan’s re-election.

It was controversy over power of appointments which became a major reason for deteriorating relations between the prime minister and the president in the post Ziaul Haq period. Both Ghulam Ishaq Khan and Farooq Khan Leghari asserted their powers in the appointments of services chiefs, provincial governors, superior courts judges and other heads of state institutions. On the other hand, the prime ministers attempted to influence such appointments but in vain. When Nawaz Sharif sought the support of the parliament for repealing the 8th Amendment, it resented Ghulam Ishaq Khan. However, when the powers got shifted to prime minister under 13th Amendment, there remained no check upon the government. As the unrestricted powers led to the misuse of authority by Nawaz Sharif, the military under General Pervaiz Musharraf had to counter him by taking over of the government.

The election of Farooq Ahmad Khan Leghari, a PPP stalwart, as the President of Pakistan was a victory proclamation for the elected government. However, the government took it as an opportunity to misuse its authority rather than promoting a democratic culture. Almost in defiance of an efficient executive, the judiciary under Chief Justice Sajjad Ali Shah made efforts to prevent the rise of tyranny devoid of a rule of law and the progressive deterioration of a post-martial law democratisation. However, this time, the president and the Chief Justice of Pakistan were perceived by the public as playing a critical role in the dismissal of elected government of Benazir Bhutto. No doubt, the Court's decision under Chief Justice Sajjad Ali Shah clearly reflected its own grudge against Benazir Bhutto government thus granting legality to the action of the president.

Like military regime, the power of the President to direct Chief Justice of a High Court to perform as acting Governor was also misused in post Ziaul Haq period. The practice had been challenged in the courts on several occasions which had decided in favour of the President only, in case the Governor was out of the country or where the Governor was unable to perform his functions due to any reason. Usually the Chief Justices of High Courts had been kept in acting capacity during the military regime and even by the subsequent elected government, whenever favourable verdicts were required from the Courts. The practice was discarded after the Supreme Court judgment in *Al-Jihad Trust Case* in 1996.

The 1973 Constitution is based on the principle of separation of powers thereby defining the domain of the state institutions. The institution of judiciary has been entrusted with the power to interpret law vis-à-vis the fundamental rights guaranteed by the Constitution. Though, the higher judiciary has no power under the Constitution of 1973 to propose any legislation or participate in the law making, the extra-official consultation and personal advisory function of the Chief Justice of Pakistan had frequently been extended to the military ruler and had been continuing during the civilian government. President Farooq Ahmad Khan Leghari, after dissolving Benazir Bhutto government, had invited Chief Justice Sajjad Ali Shah to the President House. The Chief Justice of Pakistan was briefed of the entire situation which, in the President's opinion, had led him to dismiss the government. The chief justice could not realize that he would be presiding over a Bench soon to determine the legality of presidential action.

In clear violation of the Constitution, Nawaz Sharif also invited Chief Justice Sajjad Ali Shah in August 1997, at his residence in Lahore for discussion on the proposed anti-terrorism law and arriving at some settlement for its enactment. It is difficult to understand, under what authority, the Chief Justice could hold talks with the prime minister and arrive at any settlement over a proposed law that was apparently unconstitutional. Later, the same law, when enacted as Anti-Terrorism Act (ATA) 1997 was challenged in the Supreme Court. After detailed hearings, some provisions of the ATA 1997 were held unconstitutional by the Supreme Court and were declared void. The result was, an antagonism of the government towards the higher judiciary which further aggravated the already worsening relations.

The absolute majority enjoyed by Nawaz Sharif in second term provided him an opportunity to repeal the Eighth Amendment by passing 13th Amendment Bill, which converted the status of the president to a titular head of the state. Moreover, to secure his parliamentary majority, Nawaz Sharif also passed 14th Amendment Bill which barred the parliamentarians from floor crossing and bound them to cast their votes in accordance with the party guidelines. These amendments facilitated a dictatorial role for Nawaz Sharif as a powerful head of the government as well as parliamentary leader to control his party members. However, instead of strengthening the institution, Nawaz Sharif used these powers to strengthen his own self by dominating all other state institutions.

Nawaz Sharif also tried to override the Supreme Court with appointment of his loyalist judges. The refusal of chief justice led to the confrontations between the judiciary and the executive, and among the executive institutions i.e., the president and the prime minister which further weakened the process of democratisation. It was a tug of war in which the heads of the state institutions strived for their personal superiority rather than safeguarding the institutions. An intriguing aspect of the issue emerged when Nawaz Sharif government was successful to create rifts within the Supreme Court judges. When summoned in contempt of court case, the PML-N leadership persuaded the party supporters to attack the building of Supreme Court which, in fact, was a tragic incident in the political and constitutional history of Pakistan.

As the military played a neutral role, the presidency proved weak and could not dismiss the elected government, despite the restoration of 58(2)(b) by the chief justice. As a result, Farooq Khan Leghari had to resign, and Sajjad Ali Shah was set to cease to hold his office. The dissenting judges were successful removing their peer judge in a disgraceful and humiliating manner. However, these developments proved that previously, three out of four dismissals of elected governments were backed by the military. That was the reason, the judiciary upheld these decisions of the presidents and the dismissed governments were not restored.

8.5 Military Takeover by General Pervaiz Musharraf

The prolonged military rule from 1977 to 1988 had destroyed democratic norms, subdued democratic values and narrowed the prospects of national cohesion. Therefore, the organized, self-

interested and powerful military could not be resisted during 1990s by the weak political parties. However, the electoral experience shows that the political leaders gained greater autonomy after each of the elections in 1988, 1990, 1993 and 1997. Despite presidential interventions for dismissing elected governments and dissolving the National and Provincial Assemblies one after another, the aspiration for consolidation of democracy persisted. Benazir Bhutto and Nawaz Sharif raised the expectations of the people for democratic rule and supremacy of the parliament. As opposition leaders, although in a limited way, they also contributed towards the consolidation of democratic process. However, both the leaders had demonstrated an autocratic style towards the criticism of opposition, as much as they had worked as elected prime ministers. When acting as opposition leaders, both Benazir Bhutto and Nawaz Sharif kept supporting the undemocratic moves by the president and the military.

It was due to the parliamentary majority enjoyed by Nawaz Sharif that General Jahangir Karamat stepped down quietly as the support of all military commanders was not available to him. Appointing General Pervaiz Musharraf by superseding two senior Generals, Nawaz Sharif thought that a Muhajir General would be less powerful in the Punjabi-Pashtun dominated military. However, this time, the military commanders fully supported their chief against the elected government and he enjoyed powerful position in decision making. General Pervaiz Musharraf, the new Army Chief had secured the office of Chairman JCSC after the retirement of Air Chief Marshal Farooq Feeroz Khan, even though it was the turn of Naval Chief. In protocol, Chairman JCSC is senior to the Army Chief but, in fact, the real power lies with the Army Chief and the former is a symbolic post. However, still, the concentration of two posts in the hands of the Army Chief resulted in his further empowerment.

The controversy between Nawaz Sharif and General Pervaiz Musharraf over the Kargil issue resulted in the removal of the latter. However, as the military felt the need of stepping in, no matter what the political situation of the country was, General Pervaiz Musharraf took over the reins of power by imposing military rule in October 1999 and banished democracy to move further. General Pervaiz Musharraf followed the footsteps of General Ziaul Haq and asked the judges to take oath under the Provisional Constitution Order 1999. The Supreme Court under PCO judges, once again granted legitimacy to the military regime by re-activating the Law of Necessity. General Pervaiz Musharraf held referendum to get himself elected as President of Pakistan for the next five years along with keeping the army slot. Unlike Z. A. Bhutto, Nawaz Sharif instead of facing the Court, opted to seek relief by striking a deal with the military regime and went in exile. These unconstitutional developments once again derailed the so-called efforts for consolidation of democracy.

8.6 Findings

As is evident from the facts narrated thus far, none of the actors involved in the politics could play a role that could have consolidated democracy in Pakistan including the politicians, the electorate, the presidency, the superior courts and, of course, the military as no exception. Therefore, the findings of the study have been summarized in the following points:

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- a) The politicians have never been on the same page to strengthen the civilian state institutions, which affected democratic consolidation in Pakistan.
 - b) Lack of legislative consensus building capacity within the parliament never allowed the elected representatives to develop agreements.
 - c) The politicians have always preferred the street politics, politics of agitation and confrontation which led to political crises.
 - d) The preference of politicians for their personal rather than national interest has not allowed them to truly collaborate on issues of national importance during grave national crisis.
 - e) The reliance of civilian governments on the military for handling political unrest has often jeopardised its popular support base.
 - f) Involvement of military in law and order issues not only threatened cohesion of the military but also provoked it to intervene in politics.
 - g) The professional training/education of military officers in the West enables them to see the balance in civil-military relations but, the politicians lack such opportunities.
 - h) Due to its weak institution, the judiciary has never stood up against the military takeover or an extra-constitutional exercise.
 - i) Opposition parties not only invited military but also approached the judiciary to give way to military rule especially, in the post Ziaul Haq era.
 - j) The judiciary upheld three out of four dismissals of elected governments due to military-president nexus which shows its weakness vis-à-vis other state institutions.
 - k) The appointment of judges without merit, especially at high court has been a major factor which harmed the independence of judiciary in Pakistan.
 - l) The Supreme Judicial Council has remained ineffective due to which the judiciary in Pakistan lacks an effective system of accountability.
 - m) Extra-judicial responsibilities of judges, especially of Chief Justice, have often damaged the credibility of the judiciary.
 - n) State institutions especially the executive and the military have crossed their demarcated limits, which affected the democratic process to flourish.
 - o) Dispensation of justice and administration/management are two different skills. Therefore, judges appointed as Chief Election Commissioner (CEC) have not been able to ensure proper management during the elections.
 - p) Due to the lack of power balance in a parliamentary system, the president and the prime minister did not work together to safeguard the national interest.
 - q) The elected governments did not develop an open forum to bring the civil-military relations to the knowledge of the people for developing a mechanism of public scrutiny.
 - r) The politicians and military never realised the difference between illegitimate military interference in policy making and the legitimate protection of military's core interests.

8.7 Recommendations

Based on the above-mentioned findings and analysis, following recommendations are put forward, the adoption of which will, hopefully, bring a positive change in the political scenario of Pakistan in terms of an amicable relations among the major state organs.

- a) The possibility of Pakistan to move forward for realising the ideals of democracy cannot be achieved unless the politicians are on the same page in terms of strengthening the civilian institutions. Moreover, for democracy to stabilize, it is important that all state institutions remain within their demarcated limits. The civilian institutions should stick to the principle of separation of powers under the Constitution. The military should focus on its professional development and avoid interference in political affairs. This strategy will help in avoiding encroachment by one state organ in the affairs of others.
- b) The elected governments in Pakistan should make collaborative efforts involving all political parties for increased political participation. The politicians usually try to concentrate power through a centralized decision making while putting limitation on political freedoms. Instead, the political leaders should consolidate power through partnership with potential political rivals. Cooperation among political parties does not necessarily mean that a vibrant political opposition would cease. Developing consensus will entail respect for the political authority of an elected government.
- c) A major challenge before the elected representatives has been their lack of legislative consensus building capacity within the parliament. To strengthen the parliament, the political leaders need to show commitment to the principles of democracy. They should develop the parliament as a primary forum for debate on national issues with open mind. Confidence in electoral competition among the political parties should be matched by their performance both inside and outside the parliament.
- d) In a country like Pakistan where politics of agitation and confrontation has long been the norm, securing agreement among political parties is an immensely difficult task. The political leaders need to truly collaborate with each other on issues of national importance. It may develop smooth working relationship and build democratic traditions that will discourage military adventurism. By extending some degree of cooperation to each other, the political leadership may

lay down a mechanism for equitable and cordial relationship between the elected government and the military.

- e) The political parties and politicians in Pakistan look more to their personal interests rather than national interest. No matter whatever be the power balance, the president and the prime minister should learn to work together for safeguarding the national interest both at domestic and international level. The heads of other state institutions including the military and establishment should also work for national interest rather than consolidating personal power or that of an institution.
- f) The experience of elections in Pakistan shows that the administrative skills of the judges are not sufficient for the effective handling of the business of CEC. Therefore, much of the problems that emerged during the elections were due to poor management and lack of proper arrangements. Therefore, the government needs not to rely on the judiciary as a solution for every issue. An amendment to the Constitution shall be passed from the parliament in this regard. An age limit for the CEC shall be specified and the condition of appointment of CEC from among the retired judges need to be reconsidered.
- g) The elected government should reduce its reliance on the military for correcting the internal law and order situation. Moreover, the use of military for domestic political unrest or other law and order functions has often jeopardised popular support base for elected government. These tasks not only threaten cohesion of the military, they also provoke the military to involve itself in political affairs. For the sake of both popular support and corporate interests of the military, the political leaders should take alternative measures of dealing with the civil unrest and settling political disputes.
- h) Due to the presence of internal conflicts in Pakistan, it would be difficult to abandon military's role in dealing with internal disorder. In some cases, using the military forces for domestic security operations is not only warranted, rather it is the only solution available with the civil government. Nonetheless, the use of coercive measures for conflict resolution may at times be necessary, however it carries significant risks at the political front for the government. The politicians must be aware of the problems arising out of the deployment of

military for purposes outside of their professional field and should take precautionary measures.

- i) There are many inner workings of the military that would neither like to be revealed by the military nor be appropriate for a discussion on every public forum. However, the elected government should develop an open forum in which the relations between the civilian leaders and the military may be brought to the knowledge of public. Indeed, the public opinion plays an important role in shaping the civil-military relations and in reducing the politicisation of military. Although, public opinion in Pakistan is notoriously fickle, political leaders would likely benefit from the creation of an open forum for discussing civil-military relations.
- j) Nonetheless, an elected government with a weak support base has generally wielded less control over the institution of military. By opening the civil military relations for public debate, political leaders can get support from the masses. An initiative of the civil government that gives a voice to the people through awareness and discussion of civil-military relations may immediately enhance the popularity of political leaders. Moreover, open discussion on civil military relations might increase involvement of the masses in the political process for democratic consolidation.
- k) By subjecting the issue of civil-military relations to some level of public scrutiny, the elected government can create a framework to reduce intervention of the military in political affairs. Indeed, this process may create problems for elected government if they wish to use the public debate on civil military relations to its political advantage. However, the political leadership must choose either to use it for genuine civilian control over the military, or as an opportunity to manipulate the democratic system for its personal and/or party interest.
- l) To bring military under the control of civilian government is the essence of civil military relations. The elected governments which are unable or unwilling in curtailing influence of the military on political matters are unlikely to achieve strong civilian control over the military. However, the government should also avoid introduction of confrontational policies that breed insecurity and mistrust within the military as guardians of the state frontiers. A mechanism of effective

control of political leaders over the military is essential however, a heavy-handed approach is likely to elicit a backlash. Therefore, to avoid any hostile reaction, the overall threat these controlling measures pose to military interests, autonomy, cohesion, and survival should remain low to institutionalize civilian control. However, when political power is unified by the civilians and the popular support base is strong, limited threats are likely to produce strong control of the political leaders.

- m) The elected government needs to work hard to decrease threats to the organisational and corporate interests of the military. The reduced military interference in political affairs is often referred to as neglecting corporate interests of the military. In fact, the difference between illegitimate military interference in policy making and the legitimate protection of core interests of the military is not always clear to both the civilian leaders and the military commanders. The political leaders need to understand the difference between respect for the military as an institution, which is important for some healthy civil-military relations, and appeasing the military high command which perpetuates the role of the military as a policy maker.
- n) Many military officers get exposed to the balance in civil military relations when they undergo professional training or military education in western democratic countries. However, politicians lack such experience in relation to defence matters. Therefore, a gap of understanding exists between the military and political leaders. To fill the knowledge gap, both the politicians and military leaders should attend training programs or seminars related to military to understand their needs and strategic challenges. It is important that the political leaders are educated in military affairs to have meaningful interaction with the military commanders as public representatives. The politicians need to study models of civilian control of the military. In addition, political leaders should also be educated on aspects of civilian oversight and control of the budget, which is completely lacking in Pakistan.
- o) The engagement of military in ruling the country has been, by and large, maintained with the support of judiciary. The judiciary had never stood up against the military takeover or an extra-constitutional exercise due to their weak institutional presence. It has almost always agreed to take oath under the

Provisional Constitution Order issued by the military dictators. The superior courts in Pakistan must question the extra constitutional changes and the regime change by the military. This practice will help increase the judicial independence and strengthen the institution of judiciary vis-à-vis other state institutions.

- p) The judiciary has been significantly approached by opposition political parties to give a way to military rule throughout the history of Pakistan and especially in the post Ziaul Haq era. Upholding three out of four dismissals of elected governments by the judiciary has been a significant example of complete remorse of judiciary towards the elected governments. The opposition political parties need to stand against such undemocratic moves of the military or the president and not to file unnecessary petitions against the sitting or dismissed government in higher judiciary.
- q) No doubt, the human being either makes or mars the institution and judiciary is no exception. The appointment of judges without merit is one of the major factors which undermines the independence of judiciary in Pakistan. To have an independent judiciary and judges of integrity, the whole system of judicial appointment needs overhauling. The judicial appointment should be made more competitive and the processes should be more transparent. Currently, a High Court lawyer can be appointed as a judge of the High Court who, after some time, can be promoted to the Supreme Court, and can also become Chief Justice after certain period. This system of appointment needs to be conducted through proper channels, i.e., from appointment as magistrate and onwards promotions are merit based. The power of executive for appointment of judges to the higher judiciary must be limited.
- r) Indeed, the judicial independence and judicial accountability are interdependent and important in Pakistan. The judiciary in Pakistan, even if competent and independent, could never be preserved without an effective system of judicial accountability, both legal and public accountability. An unaccountable judge may be willing to disregard the principles that an independent judiciary is supposed to follow in its judgements. Therefore, a system of judicial accountability should be developed in line with the principles of judicial independence and integrity of judiciary as institution. However, irrespective of

any political gains by the government, the sole purpose of the system of judicial accountability should be advancement of the cause of justice in the society.

- s) Judges of the same court shall not be allowed to hear cases against fellow judges or their peers. Unlike the removal of Chief Justice Sajjad Ali Shah through a Circuit Bench of the Supreme Court, only the Supreme Judicial Council should be activated for conducting inquiries and taking disciplinary actions against irresponsible judges. However, this forum has remained ineffective and, hence, has been known as justices' club. To make this institution more transparent, Chairman of the Senate and Speaker of the National Assembly, being neutral offices, shall be made its members. This development will enhance the prestige of these two important heads of parliamentary chambers.
- t) Cosmetic changes are not enough to improve the image of judiciary unless the state managers fulfil their responsibilities towards this vital organ of the state. Only the technical steps, legislative corrections, reforms, constitutional amendments and judicial review cannot revise the role of superior judiciary and make it independent in its decision making. It needs commitment on the part of elected government to ensure the rule of law, institute a transparent system of appointments of judges and ensure that the judicial decisions are enforced in their letter and spirit.
- u) The practice of appointing Chief Justice of High Court to other duties is in contradiction to the concept of separation of powers as enunciated in the Constitution of 1973. To maintain independence and impartiality, the serving judges of superior courts are required to avoid extra-judicial responsibilities, either official or private as much as possible. Although, this practice has been disbanded through Eighteenth Constitutional Amendment, yet it should remain intact and the amendment shall not be reversed in any case.

BIBLIOGRAPHY

BOOKS

- Afzal, Rafiq. *The Political Parties in Pakistan: 1947-58*. Islamabad: National Institute of Historical Research, 1986.
- Ahmad, Masud. *Pakistan: A Study of its Constitutional History (1857-1975)*. Lahore: Research Society of Pakistan, 1978.
- Ahmad, Munir. *The Civil Servants in Pakistan*. Karachi: Oxford University Press, 1964.
- Ahmad, Mushtaq. *Government and Politics in Pakistan*. Karachi: Royal Book Company, 1988.
- Ahmad, Zakaria Haji & H. Crouch, (eds.). *Military-Civilian Relations in South East Asia*. Singapore: Oxford University Press, 1985.
- Ahmed, Ghafoor. *Phir Martial Law Aa Gaya* (Martial Law Again) (Urdu). Lahore: Jang Publishers, 1988.
- Ahmed, Munir. *Siasi Utar Charhao* (Ups and Downs of Politics) (Urdu). Lahore: Atishfishan Publications, 1985.
- Ali, Chaudhry Mohammad. *The Emergence of Pakistan*. Lahore: Services Book Club, 1988.
- Ali, Tariq. *Pakistan: Military Rule or Peoples' Power*. Delhi: Vikas Publications, 1970.
- Ali, Tariq. *Can Pakistan Survive? The Death of a State*. Harmondsworth: Penguin Books, 1983.
- Ali, Tariq. *The Clash of Fundamentalism: Crusades, Jihads and Modernity*, London: Verso, 2002.
- Alvi, Hamza, *Class and State*, in Hassan Gardazi & Jamil Rashid (eds.), *Pakistan: The Roots of Dictatorship*, London: Zed Press, 1983.
- Anjum, Murtaza. *Pakistan Mein Fauji Hakoomaten* (Military Governments in Pakistan) (Urdu). Lahore: Darul Shaur, 2001.
- Arif, Khalid M. *Working with Zia: Pakistan's Power Politics: 1977-1988*. Karachi: Oxford University Press, 1995.
- Arif, Khalid M. *Khaki Shadows: Pakistan 1947-1997*, Karachi: Oxford University Press, 2001.

-
- Ayub, Gohar. *Glimpses into the Corridors of Power*. Karachi: Oxford University Press, 2007.
- Aziz Sartaj. *Between Dreams and Realities: Some Milestones in Pakistan's History*, Karachi: Oxford University Press, 2009.
- Baxter, Craig & Charles H. Kennedy (eds.). *Pakistan: 1997*. Boulder: Westview, 1998.
- Baxter, Craig. *Zia's Pakistan: Politics and Security in a Frontline State*. Lahore: Vanguard, 1985.
- Bhardwaj, Kanwal Kishore. *Pakistan's March to Democracy and Liberalism*. New Delhi: Anmol Publishers, 1996.
- Bhutto, Benazir. *The Daughter of the East: An Autobiography*. London: Hamish Hamilton, 1988.
- Bhutto, Zulfiqar Ali. *Agar Mujhey Qatl Kia Giya* (If I am Assassinated). Lahore: Classic Publishers, 1981.
- Bhutto, Zulfiqar Ali. *The Great Tragedy*. Karachi: Pakistan People's Party, 1971.
- Black, Charles Lund. *The People and the Court: Judicial Review in a Democracy*. New York: Macmillan, 1960.
- Brooker, Paul. *Non-Democratic Regimes: Theory, Government and Politics*. New York: St. Martin's Press Inc., 2000.
- Burki, Shahid Javed. *Pakistan Fifty Years of Nationhood*. Lahore: Vanguard, 1999.
- Burki, Shahid Javed. *Pakistan under Bhutto*. New York: St. Martin's Press, 1980.
- Burki, Shahid Javed. *Pakistan under the Military: Eleven Years of Zia*. Oxford: Westview Press, 1991.
- Burki, Shahid Javed. *Pakistan: A Continuing Search for Nationhood*. Oxford: Westview Press, 2000.
- Burki, Shahid Javed. *Pakistan: A Nation in the Making*. Karachi: Oxford University Press, 1986.
- Chadda, Maya. *Building Democracy in South Asia: India, Pakistan and Nepal*, Boulder: Lynne Rienner, 2000.
- Cheema, Pervaiz Iqbal. *The Armed Forces of Pakistan*. Karachi: Oxford University Press, 2002.

-
- Cheema, Pervaiz Iqbal. *The Defence Policy of Pakistan: 1947-1958*. Hampshire: Macmillan, 1990.
- Chishti, Faiz Ali. *Betrayal of Another Kind: Islam, Democracy and Military*. Rawalpindi: PCL Publishing House, 1990.
- Choudhury, Golam Wahed. *Constitutional Development in Pakistan*. London: Longman, 1967.
- Choudhury, Golam Wahed. *Pakistan: Transition from Military to Civilian Rule*. Essex, England: Scorpion Publishing Ltd., 1988.
- Choudhury, Golam Wahed. *The Last Days of United Pakistan*. London: Hurst & Company, 1974.
- Cohen, Stephen Philip. Perspectives on Pakistan's Foreign Policy, in K. Arif (ed.), *Pakistan's Foreign Policy, Indian Perspective*, Lahore: Vanguard, 1984.
- Cohen, Stephen Philip. *The Pakistan Army*. Karachi: Oxford University Press, 1998.
- Cohen, Stephen Philip. *The Idea of Pakistan*. Washington, D.C.: Brookings Institution Press, 2004.
- Cloughley, Brian. *War, Coups and Terror: Pakistan Army in the Years of Turmoil*. South Yorkshire: Pen & Sword Books Ltd., 2008.
- Doherty, Katherine M. & Craig A. Doherty. *Benazir Bhutto: Impact Biographies Series*, New York: Franklin Watts, 1990.
- Finer, Samuel E. *The Man on the Horse Back: The Role of Military in Politics* (2nd ed.). Middlesex: Penguin Books, 1975.
- Gardazi, Hassan & Jamil Rashid (eds.). *Pakistan: The Roots of Dictatorship*. London: Zed Press, 1983.
- Ghazali, Abdus Sattar. *Islamic Pakistan: Illusions and Reality*, Islamabad: National Book Club, 1999.
- Gohar, Altaf. *Ayub Khan: Pakistan's First Military Ruler*. Lahore: Sang-e-Meel Publications, 1993.
- Glupen, Siri et'al (Ed.). *Democratization and the Judiciary: The Accountability Function of Courts in New Democracies*, London: Frank Cass Publishers, n.d.
- Haggard, Stephan & R. R. Kaufman. *The Political Economy of Democratic Transition*. Princeton: Princeton University Press, 1995.
- Haqqani, Hussain. *Pakistan: Between Mosque and Military*. Lahore: Vanguard, 2005.

-
- Hassan, Gul. *Memoirs of Lt. General Gul Hassan Khan*. Karachi: Oxford University Press, 1993.
- Hassan, Khalid. *Rear-View Mirror*. Lahore: Alhamra Publishing, 2002.
- Hassan, Mubashar. *The Mirage of Power: An Inquiry into Bhutto Years (1971-1977)*. Karachi: Oxford University Press, 2000.
- Hayes, Louis D. *The Struggle for Legitimacy in Pakistan*. Lahore: Vanguard, 1986.
- Heywood, Andrew. *Political Ideas and Concepts: An Introduction*. London: Macmillan, 1994.
- Hudson, Geoffrey Francis (ed.). *Reform and Revolution in Asia*. London: George Allen and Unwin Ltd., 1972.
- Huntington, Samuel P. *The Solider and the State: The Theory and Politics of Civil-Military Relations*. New York: Vintage Books, 1957.
- Huntington, Samuel P. *Political Order in Changing Societies*. London: Yale University Press, 1968.
- Huntington, Samuel P. *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press, 1991.
- Hussain, Abrar. *The Constitution of Pakistan: Defiled-Defaced*. Karachi: Asia Law House, 1995.
- Hussain, Akmal & Hussain Mushahid. *Pakistan: Problems of Governance*, New Delhi: Vanguard, 1993.
- Hussain, Iqbal S. *Pakistan: From Dictatorship to Democracy*, Lahore: Meraj Printers, 2007.
- Hussain, Mushahid. *Pakistan's Politics: The Zia Years*. Lahore: Progressive Publishers, 1990.
- Hussain, Syed Shabbir. *Ayub, Bhutto and Zia*. Lahore: Sang-e-Meel Publications, 2001.
- Inyatullah, Dr. *State and Democracy in Pakistan*. Lahore: Vanguard, 1997.
- Inyatullah, Dr. *Pakistan's Politics: A Personal View*. Lahore: Feroze Sons Ltd., 1993.
- Iqbal, Afzal. *Islamisation of Pakistan*. Lahore: Vanguard, 1986.
- Jaffrelot, Christophe. *Nationalism without a Nation: Pakistan Searching for its Identity*, in Christophe Jaffrelot, (ed.), *Pakistan: Nationalism without a Nation?* London: Zed Books, 2002.

-
- Jaffrelot, Christopher. *The Pakistan Paradox: Instability and Resilience*, Karachi, Oxford University Press, 2015.
- Jalal, Ayesha. *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective*. Cambridge: Cambridge University Press, 1995.
- Jalal, Ayesha. *The State of Martial Rule*. Lahore: Sang-e-Meel Publications, 1999.
- Jalalazai, Musa Khan. *The Crisis of State and Society in Pakistan*. Lahore: Dua Publications, 2002.
- Janowitz, Morris. *Military Institutions and Coercion in the Developing Nations*. Chicago: University of Chicago Press, 1977.
- Jones, Owen Bennett. *Pakistan: In the Eye of the Storm*. New Haven: Yale University Press, 2002.
- Jones, Rodney W. *The Military and Security in Pakistan*, in Craig Baxter, *Zia's Pakistan, Politics and Stability in a Frontline State*, Boulder: Westview Press, 1985.
- Kadri, Shamim Hussain. *Judges and Politics*, Lahore: Jang Publishers, 1990.
- Kamal, Kamakhya L. *Pakistan, the Garrison State*, New Delhi: Intellectual Publishing House, 1982.
- Kapur, Anup Chand. *The Punjab Crisis: An Analytical Study*, New Delhi: S. Chand & Co., 1985.
- Karim, A. S. *Pakistan: Society, Polity and Economy*. Karachi: Minaa Publication, 1990.
- Kennedy, Charles H. *Bureaucracy in Pakistan*. Karachi: Oxford University Press, 1987.
- Kepel, Gilles. *Jihad: The Trial of Political Islam*, London: IB Tauris, 2002.
- Khalid, M. B. *Awan-i-Sadr Mein Sola Saal (16 Years in President House)* (Urdu). Lahore: Deed-Shuneed Publications, 1988.
- Khan, Ayub. *Friends Not Masters: A Political Autobiography*. Karachi: Oxford University Press, 1967.
- Khan, Fazal Muqem. *The Story of Pakistan Army*, Oxford University Press, 1963.
- Khan, Fazal Muqem. *Pakistan: Crisis in Leadership*. Islamabad: National Book Foundation, 1973.

-
- Khan, Hamid. *Constitutional and Political History of Pakistan* (2nd ed.). Karachi: Oxford University Press, 2009.
- Khan, Mohammad Asghar. *Generals in Politics*. Delhi: Vikas Publishers, 1983.
- Khan, Mohammad Asghar. *We Learnt Nothing from History: Pakistan Politics and Military Power*. Karachi: Oxford University Press, 2005.
- Khan, Riaz M. *Untying the Afghan Knot: Negotiating the Soviet Withdrawal*. Durham: Duke University Press, 1991.
- Khan, Roedad. *Pakistan: A Dream Gone Soar*. Karachi: Oxford University Press, 1998.
- Kizilbash, Hamid H. and Mumtaz Khan. *Pakistan's Foreign Policy and Legislature* (No.9). Lahore: South Asian Institute, University of the Punjab, 1976.
- Kolkowich, Roman. *The Soviet Military and the Communist Party*, Princeton: Princeton University Press, 1967.
- Koonings, Kee and Dirk Kruijt. *Political Armies: Military and Nation Building in the Age of Democracy*. London: Zed Books, 2002.
- Kukreja, Veena. *Contemporary Pakistan: Political Processes, Conflict and Crises*. New Delhi: Sage Publications, 2003.
- Kux, Dennis. *The United States and Pakistan, 1947-2000: Disenchanted Allies*. Karachi: Oxford University Press, 2001.
- Lamb, Christina. *Waiting for Allah: Pakistan's Struggle for Democracy*. London: Hamish Hamilton, 1991.
- Mahmood, Mian Dilawar. *The Judiciary and Politics in Pakistan: A Study*. Lahore: Idara Mutalia-e-Tareekh, 1992.
- Mahmood, Khalid. *Pakistan's Political Scene: 1984-1992*. 2nd ed. Lahore: Rohtas Books, 1992.
- Mahmood, Safdar. *Pakistan Kion Toota* (Why Pakistan Broke) (Urdu). Lahore: Jang Publishers, 1993.
- Mahmood, Safdar. *Pakistan: Political Roots and Development, 1947-99*. Karachi: Oxford University Press, 2000.
- Maluka, Zulfiqar Khalid. *The Myth of Constitutionalism in Pakistan*. Oxford: Oxford University Press, 1995.
- Maududi, Abul A'la. *Islamic Law and Constitution*. Lahore: Islamic Publications, 1955.

-
- Mayo, Henry Bertram. *An Introduction to Democratic Theory*. Oxford University Press, 1960.
- McGrath, Allen. *The Destruction of Pakistan's Democracy*. Karachi, Oxford University Press, 1996.
- Mian, Ajmal. *A Judge Speaks Out*. Karachi: Oxford University Press, 2004.
- Musharraf, Pervaiz. *In the Line of Fire: A Memoire*. New York: Free Press, 2006.
- Nawaz, Shuja. *Crossed Swords: Pakistan: Its Army, and the Wars Within*. Karachi: Oxford University Press, 2008.
- Newberg Paula R. *Judging the State: Courts and Constitutional Politics in Pakistan*. Cambridge: Cambridge University Press, 1995.
- Niazi, Kausar. *Aur Line Kut Gai (And Line Disconnected) (Urdu)*. Lahore: Jang Publishers, 1987.
- Niazi, Zamir. *The Press in Chains*. Karachi: Royal Book Company, 1986.
- Nixon, Richard. *The Memoirs*. New York: Warner Books, 1978.
- Nizami, Qayyum. *Gernail aur Siasatdan Tareekh ki Adalat mein (Urdu) (Generals and Politicians in the Court of History)*. Lahore: Jahangir Books, 2009.
- Nordlinger, Eric A. *Soldiers in Politics: Military Coups and Governments*. Englewood Cliffs: Prentice Hall Inc., 1977.
- O'Donnell, Guillermo and P. C. Schmitter. *Transition from Authoritarian Rule: Tentative Calculus about Uncertain Democracies*. Baltimore: John Hopkins University Press, 1986.
- Padrino, Mercedes. *Women in Politics: Benazir Bhutto*. Philadelphia: Chelsea House Publishers, 2004.
- Patel, Dorab. *Testament of a Liberal*. Karachi: Oxford University Press, 2004.
- Perlmutter, Amos. *The Military and Politics in Modern Times: On Professional, Praetorian and Revolutionary Soldiers*. New Haven: Yales University Press, 1977.
- Rajaratnam, Tellipalai W. *A Judiciary in Crisis: The Trial of Zulfiqar Ali Bhutto*. Madras: Kanthalakam, 1988.
- Rathore, Zafar Iqbal. *Failure of National Integration or Regionalism in Pakistan*. Islamabad: National Defence College, 1984.

-
- Raza, Shaukat. *The Pakistan Army: 1966-71*. Rawalpindi: Army Education Press, 1990.
- Rizvi, Hassan Askari. *The Military and Politics in Pakistan: 1947-1997*. Lahore: Progressive Publishers, 2000.
- Rizvi, Hassan Askari. *Military, State and Society in Pakistan*. Lahore: Sang-e-Meel Publications, 2003.
- Robert Prinkley. *Democracy in the Third World*. Delhi: Viva Books, 2004.
- Samdani, Khaja Muhammad Ahmad, *Reminiscence*. Lahore: Sang-e-Meel Publications, 2004.
- Sattar, Abdul. *Pakistan's Foreign Policy: 1947-2005*. Karachi: Oxford University Press, 2007.
- Sayeed, Khalid B. *The Political System of Pakistan*. Boston: Houghton Mifflin, 1967.
- Sayeed, Khalid B. *Pakistan: The Formative Phase, 1858-1947*. Karachi: Oxford University Press, 1968.
- Sayeed, Khalid B. *Politics in Pakistan: The Nature and Direction of Change*. New York: Praeger Publishers, 1980.
- Schofield, Victoria. *Bhutto: Trial and Execution*. London: Chassell, 1979.
- Sehri, Inam R. *Judges and Generals in Pakistan (Volume-I)*, Guildford, Surrey: Grosvenor House Publishing, 2012.
- Shafqat, Saeed. *Civil-Military Relations in Pakistan*. Oxford: Westview Press, 1997.
- Shah, Nasim Hassan. *Aihad Saaz Mounsaf*, Lahore: Alhamad Publications, 1997.
- Shah, Sajjad Ali. *Law Courts in a Glass House, An Autobiography*, Karachi: Oxford University Press, 2001.
- Siddiq, Ayesha. *The Military Inc.: Inside Pakistan's Military Economy*, Islamabad: Vanguard, 2007.
- Sirohey, Iftikhar Ahmed. *Truth Never Retires*. Lahore: Jang Publishers, 2000.
- Stephen, Alfred. *The New Professionalism of Internal Warfare and Military Role Expansion*, in Alfred Stephen (ed.), *Authoritarian Brazil*. New Haven: Yale University Press, 1973.
- Sundhaussen, Ulf. *The Durability of Military Regimes in South East Asia*, in Z. H. Ahmed and H. Crouch (eds.), *Military-Civilian Relations in South East Asia*. Singapore: Oxford University Press, 1985.

-
- Talbot, Ian. *Pakistan: A Modern History*. London: Hurst & Company, 2003.
- Tolbert, Strobe. *Engaging India: Democracy, Diplomacy and the Bomb - A Memoire*. Washington DC: Brooking Institution Press, 2004.
- Wolpert, Stanley A. *Zulfi Bhutto of Pakistan: His Life and Times*. New York: Oxford University Press, 1993.
- Waltman, Jerold L. *The Courts and Political Change in Post-Industrial Society*, in Waltman and Kenneth M. Holland (eds.), *The Political Role of Law Courts in Modern Democracies*. London: Macmillan, 1988.
- Warraich, Suhail. *Ghaddar Koun? (Who is Traitor) (Urdu)*. Lahore: Sagar Publications, 2006.
- Waseem, Mohammad. *Politics and the State in Pakistan*. Islamabad: Progressive Publishers, 2007.
- Welch, Claude E. *No Farewell to Arms? Military Disengagement from Politics in Africa and Latin America*. Boulder: Westview Press, 1987.
- Yadav, Kripal C. *Elections in Punjab: 1920-1947*, New Delhi: Manohar Publishers, 1987.
- Yong, Tan Tai. *The Garrison State: The Military, Government and Society in Colonial Punjab, 1849-1947*, Lahore: Vanguard, 2005.
- Yousaf, Mohammad & Mark Adkin. *The Bear Trap: Afghanistan's Untold Story*. Lahore: Jang Publishers, 1992.
- Yousaf, Hamid. *Pakistan: A Study of Political Developments (1947-1997)*. Lahore: Sang-e-Meel Publications, 1999.
- Ziring, Lawrence. *Pakistan in the Twentieth Century: A Political History*. Oxford University Press, 2006.
- Ziring, Lawrence. *Pakistan: At the Cross Current of History*. Lahore: Vanguard, 2004.
- Ziring, Lawrence. *Pakistan: The Enigma of Political Development*. Boulder: Westview Press, 1980.
- Ziring, Lawrence. *The Ayub Era: Politics in Pakistan, 1958-69*. New York: Syracuse University Press, 1971.

Articles (Journal)

- Akhtar, Nasreen. "Polarised Politics: The Challenge of Democracy in Pakistan." *International Journal on World Peace* 26.2 (2009): 31-63.

-
- Amin, Tahir. "Pakistan in 1993: Some Dramatic Changes." *Asian Survey* 34 (1994): 191-199.
- Amin, Tahir. "Pakistan in 1994: The Politics of Confrontation." *Asian Survey* 35 (1995): 140-146.
- Baxter, Craig. "Pakistan Votes." *Asian Survey* 11 (1971): 197-218.
- Braibanti, Ralph. "Pakistan: Constitutional Issues in 1964." *Asian Survey* 5.2 (1965): 79-87.
- Burki, Shahid Javed. "Pakistan Under Zia: 1977-1988." *Asian Survey* 28.10 (1988): 1082-1100.
- Cohen, Stephen P. "Pakistan Army, Society and Security." *Asian Affairs* 10 (1983): 1-26.
- Cohen, Stephen. P and Marvin G. Weinbaum. "Pakistan in 1980: Weathering." *Asian Survey* 21 (1981): 162-171.
- Cohen, Stephen. P and Marvin G. Weinbaum. "Pakistan in 1981: Staying on." *Asian Survey* 22 (1982): 136-146.
- Danopoulos, Costa, and Danial Zirker. "Civil-Military Relations Theory in the Post-Communist World. *Geneva Centre for the Democratic Control of Armed Forces* 38 (2002). 1-16
- Das-Gupta, Jyotirinda. "A Season of Caesars: Emergency Regimes and Development Politics in Asia." *Asian Survey* 18 (1978). 315-49.
- Deutsch, Jan G. "Neutrality, Legitimacy and the Supreme Court: Some Intersections Between Law and Political Science." *Stan L. Review* 20 (1967): 169-187.
- Hassan, Muhammad. "Causes of Military Intervention in Pakistan: A Revisionist Discourse." *Pakistan Vision* 12.2 (2011): 66-78
- Hussain, Fayyaz Ahmad & Abdul Basit Khan. "Role of the Supreme Court in the Constitutional and Political Development of Pakistan: History and Prospects; *Comparative Study of Begum Nusrat Bhutto (1977) and Syed Zafar Ali Shah Case (2000).*" *Journal of Politics and Law* 5 (2012): 82-95
- Khalid, Irum. "Role of Judiciary in the Evolvment of Democracy in Pakistan." *Journal of Political Studies* 19.2 (2012): 125-142.
- Khan, Rais Ahmed. "Pakistan in 1991: Lights and Shadows." *Asian Survey* 32 (1992): 197-206.
- Khan, Rais Ahmed. "Pakistan in 1992: Waiting for Change." *Asian Survey* 33 (1993): 129-139.

-
- La Porte, Robert. Jr. "Succession in Pakistan: Continuity and Change in a Garrison State." *Asian Survey* 9 (1969): 842-61.
- La Porte, Robert. Jr. "Pakistan in 1971: The Disintegration of a Nation." *Asian Survey* 12 (1972): 97-108.
- La Porte, Robert. Jr. "Pakistan in 1972: Picking up the Pieces." *Asian Survey* 13 (1973): 187-198.
- La Porte, Robert. Jr. "Pakistan in 1996: Starting Over Again." *Asian Survey* 37 (1997): 118-125.
- La Porte, Robert. Jr. "The US policy of Non-Proliferation towards South Asia." *Pakistan Horizon* 56 (2003): 35-54.
- Lasswell, Harold D. "The Garrison State." *The American Journal of Sociology* 46.4 (1937): 455-468.
- Mahmood, Amna. "The Political Ideals of Miss Fatima Jinnah." *Pakistan Vision* 6, (2005): 55-76.
- Mahmood, Safdar. "Decline of Pakistan Muslim League and its Implications: 1947-54." *Pakistan Journal of History and Culture* 15 (1994): 63-84.
- Mellema, R. L. "Basic Democracies System in Pakistan." *Asian Survey* 1 (1961): 10-15.
- Morlino, Leonardo. "What is a good Democracy." *Democratization* 11 (2004): 10-32.
- Mujahid, Sharif-ul. "The Assembly Elections in Pakistan." *Asian Survey* 5 (1965): 538-551.
- Noman, Omar. "Pakistan and General Zia: Era and Legacy." *Third World Quarterly* 11 (1989): 28-54.
- Qadir, Shaukat. "An Analysis of Kargil Conflict 1999." *RUSI Journal* (2002). 24-30.
- Rabbani, Attar. "Prospects of Civilian Rule in Pakistan." *The Dialogue* 8.1 (2013): 1-16.
- Rais, Rasul B. "Elections in Pakistan: Is Democracy Winning?" *Asian Affairs* 12.3 (1985): 43-61.
- Rais, Rasul B. "Pakistan in 1988: From Command to Conciliation Politics." *Asian Survey* 29 (1989): 199-206.
- Rizvi, Hassan Askari. "The Paradox of Military Rule in Pakistan." *Asian Survey* 24.5 (1984): 534-555.

-
- Rizvi, Hassan Askari. "Third General Elections in Pakistan, 1985." *Pakistan Journal of Social Sciences* 2 (1986): 1-21.
- Rizvi, Hassan Askari. "Pakistan in 1998: The Polity under Pressure." *Asian Survey* 39 (1999): 177-184.
- Rose, Leo E. and D. Hugh Evans. "Pakistan's Enduring Experiment." *Democracy* 8.1 (1997): 83-96.
- Rustow, Dankwart A. "Transition to Democracy: Towards a Dynamic Model." *Comparative Politics* 2 (1970): 352-358.
- Shah, Amanullah. "Impact of Army on Independence of the Judiciary in Pakistan." *Gomal University Journal of Research* 26.1 (2011). n.pp.
- Shah, Amanullah. "Superior Judges' Commitment to Judicial Independence in Pakistan." *Gomal University Journal of Research* 27.2 (2011). n.pp.
- Shafqat, Saeed. "Democracy in Pakistan: Value Change and Challenges of Institution Building." *The Pakistan Development Review* (1998): 281-298.
- Syed, Anwar H. "Pakistan in 1976: Business as Usual." *Asian Survey* 17 (1977): 181-190.
- Syed, Anwar H. "Pakistan in 1977: The Prince is Under the Law." *Asian Survey* 18 (1978): 117-125.
- Taj, Farzana Gul. "Dismissal of NAP Government in Balochistan." *Pakistan Vision* 5 (2004): 49-62.
- Tate, C. Neal. "Courts and Crisis Regimes: A Theory Sketch with Asian Case Studies." *Political Research Quarterly* 46.2 (1993): 311-338.
- Weinbaum, Marvin G. and Stephen P. Cohen. "The March 1977 Elections in Pakistan: Where Everyone Lost." *Asian Survey* 18 (1977): 599-618.
- Weinbaum, Marvin G. and Stephen P. Cohen. "Pakistan in 1982: Holding on." *Asian Survey* 23 (1983): 123-132.
- Welch, Claude E. "Military Disengagement from Politics: Paradigm, Processes, or Random Events." *Armed Forces and Society* 18.3 (1992): 323-342.
- Yasmeen, Samina. "Democracy in Pakistan: The Third Dismissal." *Asian Survey* 34 (1994): 572-588.
- Ziring, Lawrence. "Pakistan in 1989: The Politics of Stalemate." *Asian Survey* 30 (1990): 126-135.

Ziring, Lawrence. "Pakistan in 1990: The Fall of Benazir Bhutto." *Asian Survey* 31 (1991): 113-124.

Newspapers and Magazines

- BBC News (Urdu), Online
- Daily Dawn (English), Islamabad
- Daily Jang (Urdu), Islamabad
- Guardian (English)
- Nawa-i-Waqt (Urdu), Lahore
- New York Times (English)
- Pakistan Times (English), Islamabad
- The Economist (English), London
- The Herald (English)
- The Nation (English), Islamabad
- The News International (English), Islamabad
- The Muslim (Weekly), Islamabad
- Washington Post (English)